REPORTS OF CASES

DETERMINED IN THE

COURT OF NIZAMUT ADAWLUT,

FROM JANUARY TO JUNE, 1852.

WITH AN INDEX.

VOL. II.—PART I.

CALCUTTA:

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1853.

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CASES

IN THE

NIZAMUT ADAWLUT.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

KISHTO ADOCK

versus

BISHONAUTH DOSS, (No. 1,) NOBO KOOMAR, (No. 2,) TEENCOUREE DOSS, (No. 3,) BHOOBUN KOLYE, (No. 4) AND KHETTURMONEE KYBURTEENEE, (No. 5.)

1852.

January 1.

Case of BISHONAUTH DOSS and others.

The prisoners were convicted of the murder of the deceased, but the fact of his having been detected in an intrigue with the wife of one of the prisoners, was admitted in mitigation of punishment, and the prisoners were sentenced to imprisonment for life.

CRIME CHARGED.—1st count, wilful murder of Nokool Adock; 2nd count, being accessaries before and after the fact to the above wilful murder.

Committing officer Mr. S. Wauchope, magistrate of Hooghly.

Tried before Mr. C. Steer, officiating sessions judge, on the 12th December 1851.

Remarks by the officiating sessions judge.—"The prisoners plead 'not guilty.'

"The prosecutor's story is that one day in the beginning of Aghun, he told his wife to wake up his son, the deceased, to go with him to their fields. The wife, seeing the outer chain of the door fastened, imagined that her son had already started and told her husband so. The prosecutor, however, could not find his son any where, and on his making inquiries from the villagers, they told him they supposed that he had been carried away by a witch. He made every search, but to no purpose. Four days after his son had been missing, a headless body was found floating in the Sursuttee nuddee, not far from the prosecutor's house, which on being brought by the darogah's orders to shore, the prosecutor recognised as that of his son. He was able to do this from a thread on the right arm, from part of the black-bordered

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dhootee round the body, and also from the right arm being bent or crooked, owing to the bone having been broken when his son was a child. The prosecutor on the same day that the body was found, that is, the 24th November, informed the darogah that his son had had an attachment with Mun Mohonee Kamarunnee, daughter of Nobo Koomar, prisoner No. 2, and that he suspected, that Teencouree, Bhoobun and Jadoo Chuckerbuttee were concerned in the murder of his son, as they had been his constant companions. On the 25th, the said Mun Mohonee told the darogah that she had been told by two of her neighbours that Nokool Adock, the deceased, had been murdered in the house of the prisoner No. 1, Bishonauth Doss. Goverdhun, the chowkeedar of the village, also informed the darogah that he had overheard, the night before, a conversation between Mohonee Kaiburteenee, Bishonauth's wife, and Musst. Horo, his sister-in-law, to the effect that now that Nokool's body had been discovered, it remained to be seen what would happen next. The darogah accordingly proceeded to Bishonauth's house, where, on the side of the wall entering the house, or, as it may properly be called the door-way, marks of blood were visible, as well as on a quilt.

"On the 26th, the darogah being about to take the defence of the two women, Mohonee and Musst. Horo, who were prepared to disclose the full particulars of the murder, Bishonauth himself appeared, and made a full and complete confession. He also pointed out a skull, which he said was that of Nokool, and also in a hole with water in it, a pot and a bit of black-bordered cloth, (the corresponding bit to that found upon the body) in which he said the head had been carried to the hole.

"The confession, which was a very long one, occupied the rest of the day of the 26th, and on the 27th, Bishonauth repeated his confession before the magistrate.

"On the 28th, Mohonee Kaiburteenee and Musst. Horo also confessed to being privy to the murder, but as they had evidently taken no part in it, they were admitted as witnesses.

"The confession of Bishonauth and the depositions of the two women led to the apprehension of the other prisoners, No. 2, Nobo Koomar, No. 3, Teencouree Doss, No. 4, Bhoobun Kalye and No. 5, Khetturmunnee Kaiburteenee. These denied all knowledge of the murder, as well before the police as the magistrate. All five prisoners were, however, committed to the sessions.

"From the depositions of the two women, the wife and the sister-in law of Bishonauth, and from his own confession it would appear that a criminal attachment existed between the prisoner Bishonauth's wife and the deceased, who was a man evidently of an amourous and inconstant temperament, for Mun Mohonee, Nobo prisoner's daughter, and Khetturmunnee had each allowed his embraces, but had both been discarded. Khetturmunnee

1852. January 1. Case of BISHONAUTH DOSS and others.

seems to have taken her desertion much to heart, and jealousy had bred in her bosom a desire to be avenged on her inconstant lover. Accordingly she first acquaints the prisoner Bishonauth with the intrigue going on between his wife and the deceased, and engages, if he did not believe her, to give him occular proof of it. It was accordingly arranged between them that Bishonauth should pretend to go away somewhere, and Khetturmunnee engaged, if he would do so, and then suddenly return, that she would show the deceased in the arms of his faithless wife. She also said, that Nobo, prisoner, wanted an opportunity to kill Nokool, for the dishonor he had occasioned him, in the seduction of his daughter Mun Mohonee. On the day preceding the night of the occurrence, therefore, the prisoner told Nokool that he was going to Chandernagore, and warned him not to come to his house. Of course, this warning was not heeded, and night found the deceased and Bishonauth's wife asleep together on her bed. Bishonauth returning from Chandernagore, at about 11 o'clock, found in ardent expectation of his return, the prisoners Nobo, Khetturmunnee and her two lovers, Teencouree and Bhoobun sitting in the plantain garden, within which was Bishonauth's house. Khetturmunnee immediately congratulates him on the early execution of her promise, and tells him that he will find the lovers together inside his house. He accordingly, armed with a heavy *puckka* bamboo, proceeds to his house and demands entrance. The deceased opens the door, and prepares to retreat, when he is knocked down senseless with Bishonauth's club. The other four prisoners, Nobo Koomar, Teencouree Doss, Bhoobun Kolye, and Khetturmunnee Kaiburteenee then came up, and with a sharp cutting vegetable knife, with a broad wooden handle, obtained from the house, each five prisoners in his turn, hack at the neck, till they sever the head from the body. Khetturmunnee then fetches a mat and string. The mat is tied round the body, and with two pots, one provided by Khetturmunnee, the other obtained from the house, the body is taken by all five prisoners, and sunk in the river, and then the head is put in a pot, wrapped in the half of the murdered man's *dhootee,* and thrown into a hole in another direction.

"All this is confessed to by Bishonauth, and is corroborated by the direct testimony of the two eye-witnesses, Mohonee and Musst. Horo, and by all the circumstantial facts of the case.

"Doctor Ross deposes that, from appearances, the head and the body he examined, belonged to the same person, that he had been a young powerful man, of from twenty-five to thirty years of age, that the skull was uninjured, presenting no marks of any blow, but the body had several wounds on the shoulder, made with some cutting instrument, and that the head had evidently been severed by blows from the trunk, and that probably, the instrument in

1852.

January 1.

Case of BISHONAUTH DOSS and others.

court, which still exhibited marks of blood, was the instrument employed.

" Bishonauth Doss at the sessions, denies *in toto*, and pleads an *alibi*. With respect to his Mofussil confession, he was maltreated, and kept a whole night in torture, and that he was told to repeat what the darogah said, which was his confession, that he does not know what he said to the magistrate, as the darogah had given him some intoxicating stuff, which rendered him unconscious of what he said or did.

" The other four prisoners, each plead 'not guilty,' and alledge that they were in differrent places at the time of the murder.

" None of them, however, establish their defence, and even if the utmost extent of credit is allowed to their witnesses, their evidence does not prove that the prisoners were not at the murder.

" The jury find the prisoner No. 1, Bishonauth Doss, guilty of wilful murder, but acquit the other four prisoners.

" That all five prisoners were present and assisting, is proved by evidence, the credibility of which is not even impeached by the prisoners. The murder and what took place with the body afterwards, required several persons to be concerned in it. The witnesses had ample opportunity, for the murder was not the work of a moment, to observe all that took place, and who the perpetrators were. There is no reason to suppose that any one of the prisoners has been named from motives of ill-will, nor are any such motives even pleaded. The prisoners are all well known to the witnesses, and are not likely therefore to have been mistaken by them, add to this, the weakness of the defence of all the prisoners and their utter failure to establish their innocence. There cannot be, in my opinion, the shadow of a doubt of the guilt of any of the prisoners.

" They are, I consider, all clearly guilty, and the measure of their guilt is about equal in all the prisoners. The murder was without doubt planned and put into execution by the prisoners, Bishonauth Doss, Nobo Koomar, and Khetturmunnee Kaiburteenee, in revenge for the injury and disgrace which the intrigues of the deceased had occasioned them; assisted by the prisoners Teencouree Doss and Bhoobun Kolye, whom Khetturmunnee's charms most likely gained over. If the prisoners did not actually lay a trap for the deceased, it is clear that they were fully bent and prepared for his murder when they caught him in it. Not only was murder fully resolved upon before hand, but there is the strongest ground to believe that deliberate provision was previously made, in what manner the body was to be disposed of. Nothing short of perpetual imprisonment is a suitable sentence in such a case, and I would convict the four male prisoners, therefore, of the wilful murder, and the female prisoner of being an accessary

in the wilful murder of Nokool Adock, and sentence the former to be imprisoned in transportation beyond sea for life, and the latter to imprisonment for life in the zillah jail."

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Case of BISHONAUTH DOSS and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"It appears, from the evidence and the confessions of the prisoner Bishonauth, that the deceased was a great libertine: that he had an intrigue with the prisoner Khetturmunnee Kaiburteenee, that he had seduced the daughter of the prisoner, Nobo Koomar, that he was at the time of the murder engaged in criminal intercourse with the wife of the prisoner Bishonauth, that the prisoner Khetturmunnee, jealous at his preferring another to her, urged the other prisoners, Bishonauth and Nobo, and her two lovers, Teencouree and Bhoobun, to revenge themselves by murdering the deceased, that they agreed to do so, and that in pursuance of this agreement, they laid in wait for the deceased, and catching him in the house of the prisoner Bishonauth, sleeping with his wife, killed him. The confessions of the prisoner Bishonauth are full and distinct. They are proved to have been voluntarily made, and are corroborated in almost every particular by the direct evidence of Mohonee Kaiburteenee, the wife of the prisoner Bishonauth and Musst. Horo. I see no ground whatever for distrusting the testimony of these persons. There is no doubt that they witnessed the murder, and it is not even alleged that they bore ill-will to any of the prisoners. The *alibis* set up by the prisoners avail them nothing, and I fully concur in their conviction. The murder was unquestionably deliberate; but the provocation which the prisoner Bishonauth received was great, and certainly justifies a mitigation of punishment, though it does not in any way justify the act. Had he accidentally and suddenly discovered his wife in the act of adultery, he would have been justified in killing her and her paramour, but the manner in which the deed was done, showed that it had been premeditated. Indeed, he admits that he concerted with others to commit the murder, with a knowledge of the criminal intercourse.

"Under all the circumstances, I am of opinion that imprisonment for life is a fit sentence, and accordingly sentence the prisoners, Bishonauth, Nobo, Teencouree and Bhoobun, to imprisonment for life in transportation; and Khetturmunnee to imprisonment for life in the zillah jail.

"The sessions judge convicts the prisoner Khetturmunnee of being an accessary in the murder. She was aiding and abetting at the commission of the act, and is equally, with the others, guilty of the murder. I convict her of being an accomplice in the murder."

PRESENT:

ABER. DICK, Esq., *Judge*.

PHATWA

versus

1852. NAKOIN (No. 1) AND KOLAKHYN (No. 2.)

Jan. 3.

Case of NAKOIN and another.

Strong evidence of premeditated malice from acts proved, renders homicide murder, and prisoners sentenced to transportation for life, as accomplices.

CRIME CHARGED.—Murder of Shiveoo, son of the prosecutor.

Committing Officer, Capt. J. R. Tickell, magistrate of Akyab.

Tried before Capt. A. A. Phayre, commissioner of Arrakan, on the 14th of November 1851.

Remarks by the commissioner.—"The crime for which the prisoners stand charged, was perpetrated in the town of Akyab. It appears from the statement of the prosecutor and of two eye-witnesses to the fact, No. 1, Nachenee, and No. 2, Chynfroo, that on the afternoon of the 8th day of the waning moon, *Taw-thaleng** last, corresponding to 17th September 1851, the deceased and those two witnesses, who live in a suburb of the town of Akyab, called *Shive-bya*, came into the town on business. They were returning home after sunset at dusk, and came by a road along the harbour bank. They had to cross a creek called *kula khyoung, or paiktsheit khyoung*, and the tide being at the time low, went down on the sandy shore at the mouth of the stream. At this spot there is a stone groin or revetment thrown out, and in passing it, witness Nachenee states that he saw some people crouching there. Immediately three persons sprang up, and the prisoner No. 2, Kolakhyn, struck this witness with a club on the right arm which broke the bone, and prisoner No. 1, Nakoin, struck him on the head. He fell in the water, (having then reached the channel where the stream was,) which was knee-deep, and the prisoner, No. 2, Kolakhyn, called out to follow up the deceased Shiveoo and Chynfroo, who had by this time crossed to the other side of the creek. Both the prisoners overtook the deceased, Shiveoo, four or five bamboos (sixteen to twenty yards) from the water, and both prisoners, the witnesses swear, struck him with sticks. Deceased appears to have at once fallen without uttering a cry. The witnesses Nachenee and Chynfroo then escaped by different routes. The latter went to where he resided, not very far from the place where this occurred, and returned to the spot with the prosecutor, who is father to the deceased, and a number of the friends and relatives of the deceased. Chynfroo pointed out the spot where the occurrence took place, and named both the prisoners as the persons who had struck deceased. The persons who accompanied the prosecutor and

* Being the 23rd day of that month.

Chynfroo to the spot, found foot-marks on the sand, and traces of some body having been dragged to the water. Crossing the stream they found a heavy club, No. 1, produced before the court, and a *goung boung, or turban*, on the sand, and immediately afterwards the witness, No. 10, Phoree, found a body in the water, which proved to be that of the deceased, Shiveoo. At this time, the witness Nachenee not having appeared, was by these people supposed to have been killed also.

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Case of NAKOIN and another.

"Information was immediately conveyed to Repose, the *kevuk*, (witness No. 3) or head man of the division of the town where the crime was perpetrated, and information was given at the thanna without delay, charging the crime upon both the prisoners. Prisoner No. 1, Nakoin, was apprehended at his house, which is not far from the spot, at 8 P. M. that night. Prisoner No. 2, Kolakhyn, was not found at home by the police, but came to the thanna himself by 9 P. M., and gave himself up.

"The witnesses Nachenee and Chyufroo swear distinctly to the identity of the prisoners, whom they were previously well acquainted with. The cause of this crime is thus traced by the evidence for the prosecution. In the month of *Taboung* last (corresponding to March 1851), there occurred in Akyab, the funeral of a *phoongye*, or Budhist monk. The funeral obsequies of a Budhist monk, are celebrated with games and festivals, and for this purpose the several inhabitants of a town or village unite themselves into parties, each having a distinctive badge assumed for the time the funeral games last. The division of Shivebya, a suburb of Akyab, had a dispute during these festivals, with the people of an adjoining quarter called Peiktsheit, and even after the funeral was over the quarrel was kept up. The deceased Shiveoo was the *Tsaye*, or revenue writer for Shivebya. He appears to have been present at a meeting of the chief inhabitants of the division, held at the shed where their games had been practised, and which were under the control of a man named Khyak-thoo, an influential inhabitant of the division, who is the father of prisoner No. 2, Kolakhyn, and uncle to the prisoner No. 1, Nakoin. At this meeting, which was held in the month of *Tagoo* last, corresponding with April 1851, Khyak-thoo called upon the people assembled to vow by a sword, by fire and by water, which were placed before the assembly, to support and stand by him in the dispute or enmity with the people of Peiktsheit. Those who agreed to this slapped the ground with the palm of the hand. The prisoners were present on this occasion, but whether they slapped the ground or not, is not clear, and, as young people, it would appear, were not expected to do so. The deceased Shiveoo refused to take this vow, and with a portion of the people left the assembly. Khyak-thoo said that those who refused to take the vow, were to be treated like the people of Peiktsheit, and

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their graves to be made wherever they were met, or words to that effect. No overt act of violence appears to have occurred as regards deceased, up to the time of the occurrence of the act now charged, being an interval of five months; but cases of quarrels and assaults between people of the two villages appear to have been frequent, and as stated by the magistrate in his *roobukaree* of committal, Khyak-thoo was bound over to keep the peace. One of the witnesses to the fact, Nachenee, says, that on the evening of the occurrence, the deceased and himself and Chynfroo returned to the harbour bank and crossed the creek at the mouth of it (instead of going by a bridge higher up the creek,) in order to avoid expected quarrellers or assailants. Chynfroo merely says they came that way, because it was pleasanter. It is probable, however, that being dusk, the deceased had taken this route as one where he was less likely to meet with any assailants, than if he went the more public way.

"The defence of both prisoners is an *alibi*. Prisoner No. 1, Nakoin, states that, on the day in question he, as usual, was in the house of his father-in-law, witness No. 14, Moung Pré, that not feeling well, he bathed before dinner in the evening, and then went to sleep. That at past 6 o'clock, he was called by his father-in-law, (witness No. 14, Moung Pré, whose niece and adopted daughter is prisoner's wife,) who said their next door neighbour, a widow woman, named Mee Chynfroo, (witness No. 17,) wanted him, and when he came out, he heard from her, for the first time, that he had been accused of assaulting; that Mee Chynfroo looked at his body with a light, and saw there was no mark on it, and after this at 7 P. M. the darogah came and apprehended him, as Chynfroo said he was one of the assailants, whereas he, prisoner, had not been to the spot where the murder was said to have occurred. The prisoner, No. 2, Kolakhyn, said in his defence that on the day in question he washed his head at 3 P. M. then he went at 4 P. M. to a street of the town named Talooptan, where he met his brother-in-law, Moughong (witness No. 21,) and having some buiness proceeded to the house of Moughong's father-in-law. There they met Ongeorhee, (witness No. 22,) and Thaoo, *alias* Chaneeong (witness No. 23), also came in, and they sat talking till 7 P. M. The witness Thaoo, *alias* Choneeong, and prisoner then returned to the street called Hteedan, where they separated, and prisoner entered the house of Oungola, where he played one hand at cards with witnesses No. 24, Moungtoo, and No. 25, Shiveoo, that he then went into the street called Talooptan to purchase some fruit, and there he again encountered his brother-in-law, Moughong, who told him the darogah had been making inquiry for him, upon which he went at once to the thanna, (which is not five minutes' walk from Hteedan,) and the darogah was not there, but soon after arrived with Shiveoo's

corpse, and on Chynfroo's information, he (prisoner) was taken into custody. 1852.

"The defence of both the prisoners is distinctly and consistently supported by the witnesses, so that if their evidence is to be literally believed, it is improbable in the case of Nakoin, and almost impossible in the case of Kolakhyn that they could have committed the crime laid to their charge at the time and place stated.

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Case of NAKOIN and another.

"I, however, am firmly of opinion that they are both guilty, and for the following reasons:

"*First.*—As regards prisoner No. 1, Nakoin, his father-in-law Moung Pré's house is, by the police darogah's plan of the place, eighty bamboos, or three hundred and twenty yards, distant from the spot where the deceased was killed.

"*Second.*—Although the witnesses to the defence speak to specific hours, such as 6 o'clock and so on, their ideas of the hours by clock are very vague. The witness Mee-chyngfroo, (who lives next door to prisoner No. 1, Nakoin,) heard from a man passing her house that a man had been killed; this man, whose name is not given, is called 'Htee-tat' or the umbrella-maker, and 'Moung 'Sheng Pha,' or the father of Moung Sheng. This prisoner has not been produced, but it is evident that he had seen the people called by Chynfroo, searching for the body of deceased, and this must have been a full half hour after the occurrence. There was, therefore, ample time for the prisoner Nakoin to have come home, bathed and shown himself to Mee-chyngfroo, as stated by her and other witnesses, without any mark or mud on his body.

"*Third.*—I see no reason to doubt that prisoner Nakoin was recognised at the time by witnesses Nachenee and Chynfroo, and they swear positively to the fact.

"A club, marked No. 2, said to have been found in Nakoin's house, was produced in court, and there was an appearance of spots of blood upon it, but there is a deficiency in the evidence to the finding of the club in that state, as also to the identity of a wet waist-cloth, said to have been found by the police in the house of prisoner No. 1, Nakoin, when he was arrested. The prisoner, however, himself admitted the waist-cloth to be his, and states it was wet from his having bathed in it.

"As regards the prisoner No. 2, Kolakhyn, he lives at the distance of about half a mile or more from the place where the crime was perpetrated, and the house of his brother-in-law, Moungnhong, where his witnesses state he was until 7 P. M., is about a mile distant from the same place. The street called Hteedan, to which he next went, is more than a quarter of a mile distant from the spot of the occurrence, and this prisoner's witnesses speak to his presence elsewhere than the place in question from 4 P. M. up to about 8 P. M., or half-past, while the crime charged

1852. is stated to have occurred about dusk, or probably a little before 7 P. M.

January 3.

Case of NAKOIN and another.

"The evidence of the witnesses to the *alibi* does not, however, shake my confidence in the evidence of the witnesses for the prosecution, Nachenee and Chynfroo, to the presence of the prisoner Kolakhyn, at the time the crime was committed, and his participation in it. Nachenee states that this prisoner gave him, (witness) the blow that broke his arm, and that he was the most active of the assailants, and that he struck deceased. I consider it probable that prisoner Kolakhyn was that afternoon at the house of his brother-in-law Mougnhong, but that he left much earlier than stated by his witnesses, and when he entered the thanna at 9 P. M., with his hair wet, he had time to wash off all appearance of unusual exertion.

"The body was examined by the assistant surgeon and the native doctor, but the former being sick the latter only was examined. He gives very clear evidence; states, that only the marks of one blow was visible on the head of the deceased Shiveoo, that the skull was extremely fractured; that on opening it, about two to two and a half ounces of extravasated blood were found on the brain; that such a blow probably caused immediate death, and that the fracture no doubt was produced by a heavy club or similar instrument.

"It would appear from the evidence of the native doctor that the mark of only one blow was apparent on the head of the deceased, the blow from which death ensued; but both prisoners must be deemed equally guilty, both being direct agents in the crime, though No. 2, Kolakhyn, appears to have been the more active of the two. I do not, however, consider that the prisoners are guilty of murder. It is probable that from feelings of anger, engendered by party-spirit, from which originally arose the quarrel of deceased with the father of prisoner No. 2, Kolakhyn, as above narrated, the prisoners had determined severely to beat the deceased and his companions. I consider them guilty of aggravated culpable homicide. With reference to the circumstances of the case, particularly the dragging of the body into the water, and to the great number of cases of homicide which have of late occurred in the town of Akyab and its vicinity, I would recommend that the prisoners be sentenced each to fourteen (14) years' imprisonment with labor; and as I consider that imprisonment in banishment to the jail of Allipore would carry with it a far greater degree of warning and terror to the population generally, than imprisonment in any of the local jails, I beg to recommend that the sentence should be in those terms."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) —"This is evidently a case of murder. The prisoners waylaid the deceased, and those with him, attacked one and knocked

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January 3.

Case of NAKOIN and another.

him down, believing they had killed him, then ran after, and struck down the deceased with bludgeons, so as to fracture his skull extensively, and cause instant death.

"The waylaying, the severity of the assault on both the above persons, and the extreme violence with which the deceased was struck, are clearly indicative of premeditated malice; and render the killing murder.

"It is not in evidence who struck the fatal blow, or whether more than one was struck, or two blows on the same place. The witnesses say, both prisoners struck deceased, and the native doctor, who examined the body, deposes that there was no other wound except the one on the head; but that the skull was fractured from the top of the head to the eye.

"Therefore, the court convict both prisoners of being accomplices in murder; and sentence them both to transportation for life."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

BOLAKI.

1852.

January 5.

Case of BOLAKI.

The dying declaration of the deceased, unsupported by corroborative proof, held insufficient to justify the conviction of the prisoner, who was accordingly acquitted.

CRIME CHARGED.—Wilful murder of Behari Lall.

Committing Officer, Mr. W. F. Tucker, magistrate of Patna.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 28th of November 1851.

Remarks by the sessions judge.—"The evidence against the prisoner consists chiefly in the testimony of Bubur Ali, burkundauz, who, on the night of the murder of Behari Lall, recognized and pursued the prisoner as he was running from the *gullee* in which the deceased dwelt into the dwelling of the witness Lougee, close by, and on his return saw the wounded man come out of the *gullee* in question and stagger back into his own dwelling, and in the dying declaration of the wounded Behari Lall, who, writing the name of Bolaki Soudagur on a paper duly proved by witnesses in reply to the question of the witness Beneeram, jemadar of the thanna, caused the prisoner's apprehension; and afterwards, on the prisoner being apprehended and brought into the apartment where he was lying, in reply to the questions of the darogah on the same night, pointed to the prisoner, and again wrote his name on the same paper, as the man who had wounded him.

"Bubur Ali, above-mentioned, according to his statement, was on duty at near 1 o'clock on the night of the festival of the

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Jetiya (18th September,) when he observed a man run out of the *gullee* aforesaid, whom, though he did not see his face, and though the moon had not yet risen, he recognized to be the prisoner Bolaki, a Soudagur, whom he knew very well: getting no reply on challenging him, he pursued him as far as the dwelling of his concubine, Longee aforesaid, which he entered. On his return to the watch station, which is at the head of the *gullee* on the main street, he called the chowkeedar, the witness Chedie, and then saw a man come out of the *gullee* making a gurgling noise in his throat, and as he expressed it *(budhowas)*; that the chowkeedar now coming up, both saw this man stagger back down the *gullee* and enter a house, which, on inquiring from Annundeea, witness, who was lying in the shop attached to the dwelling, they found was occupied by Behari Lall, but belonged to the witnesses Fuqeer Chund and Ramtuhul. These two were summoned by the chowkeedar aforesaid, accompanied by the old woman Annundeea, from their dwelling at two gun shots' distance. On their arrival all entered the dwelling, having lighted a lamp, and found Behari Lall, lying speechless, in a pool of blood, with his throat cut. Notice was then sent to the thanna, whence the witness, Beneeram jemadar, was the first to arrive.

" According to his statement, corroborated by those of the other witnesses above-named, this witness finding on his asking the wounded man who had wounded him that he could not speak, procured writing materials, and he, in the presence of all the above witnesses, wrote the name of Bolaki Soudagur, on a paper signed by Fuqeer Chund and Ramtuhul as witnesses.

" It does not appear from any part of the evidence that Bubur Ali had before this mentioned to the jemadar, to the wounded man, or to any of the witnesses, having seen Bolaki run out of the *gullee* to the dwelling place of Longee, which, from her evidence, appears to be a part of Bolaki's residence, which he had given her to reside in. It has a separate entrance upon a street or *gullee* at the back of the high street running parallel to it, while the principal entrance of Bolaki's dwelling is on the high street, very nearly opposite to the end of the *gullee*, in which the deceased resided. It was to the entrance in the back street that Bubur Ali had pursued the prisoner, and there the jemadar, accompanied by Bubur Ali and the chowkeedar, now apprehended him.

" By the time they reached Behari Lall's lodging, the witness Emam Khan, darogah, had also arrived there. According to his statement, corroborated by the others aforesaid, except the chowkeedar who was sent to summon the neighbours, the prisoner was shown to the wounded man, who sat upon his *charpoy*, and being told to point to the man who had wounded him, pointed to the prisoner, and again wrote his name on the paper already mentioned, marked with the first letter of the Persian alphabet.

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"The witness Jey Singh, the native doctor, who was summoned to the assistance of the unfortunate deceased, and arrived, he says, at 2 o'clock in the morning, deposes that deceased acknowledged the above writing, and on being told by the darogah to point out the man who had wounded him, pointed to the prisoner in his presence. This witness proved the appearances of an anxious and perturbed state of mind about the deceased, his dangerous state at the time, and his death about an hour and a half afterwards.

"As to the motive which may have impelled the prisoner to the commission of the crime, Fuqeer Chund and Ramtuhul both depose that they had once or twice seen the prisoner's concubine, the witness Longee, whom they describe as a woman of bad character, in the company of the deceased, and revenge further appears to have been the motive of the perpetrator of the act, from the fact of nothing having been stolen from the dwelling, as far, at least, as the police could ascertain, for the inventory made by the darogah shows a sum of rupees 49 untouched.

"On the evidence of the two women Annundeea and Agundeea, I do not think the smallest reliance can be placed. Indeed, I felt it my duty to direct the commitment of the former for perjury in this case, on account of the many contradictory statements in her evidence, as given first before the magistrate and afterwards on the trial.

"I hesitated about the commitment of Agundeea, and the plan of the premises, where she deposes to having seen the prisoner and a female relation of his conversing about the misconduct of Longee, which I caused to be drawn by the officiating magistrate, does not afford proof that she attempted in her deposition, as I suspected, to describe a place she had never seen. I have, therefore, not ordered her commitment.

"Her testimony, if relied on, proves only that on the day preceding the night on which Behari Lall was murdered, she heard the prisoner complaining of Longee's bad conduct in gadding about; but her testimony before the magistrate, was much more, *viz.*, that Longee was present, and acknowledged that she had been with Behari Lall, on which the prisoner threatened to kill him and her. Moreover she there stated that she had seen Longee at Behari Lall's. This she here denies.

"There being no mention made in the calendar of any documents to be exhibited as proof, I did not discover till the defence of the prisoner had been taken that, besides the paper on which the wounded man wrote Bolaki Soudagur's name, there was another, witnessed also by Fuqeer Chund and Ramtuhul, purporting to be his deposition taken by the darogah. This document seems to have been written simultaneously with the other paper, and the answers are said to have been given by signs. The da-

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rogah himself contributed to this paper being overlooked, by the statement he made in this court touching the paper on which the wounded man had written. Being asked by the court why he had not written the questions to which Behari Lall wrote his replies, he said there was no time, as the Native surgeon urged the immediate despatch of the man to the hospital; and it does appear from the Native surgeon's evidence that the wound could only be sown up there, as he had not brought the necessary apparatus with him.

"As, however, the witnesses to the other paper, which must after all be considered the dying declaration of the wounded man, had deposed to the putting of every question which elicited a reply of any consequence from him, I did not deem the paper called his deposition of such importance as to make it expedient to resort to a course of doubtful propriety, and resume the investigation as against the prisoner, when the case in his defence had commenced.

"It remains to notice the evidence of traces of blood from the wounded man's residence up the lane or *gullee* to the high street or road in which the prisoner's house is situated. They are spoken of by the thanna officers and by the officiating magistrate. The darogah declares he traced the blood to the door of Bolaki's house in the high street; but Bubur Ali, burkundauz, who examined, he says, with him by the light of a lamp, on the night of the occurrence, observed it only as far as the corner of the *gullee* and high street, Mr. Tucker did not examine till several days after, when any marks on the greater thoroughfare would have been obliterated.

"The statement of Bubur Ali is the most likely to be correct, as, from the evidence of Chedie, chowkeedar, as well as Bubur Ali, the wounded man seems not to have come further than the street, and Bubur Ali pursued Bolaki, if he is to be believed, not to the door of his dwelling in the street, but to the one in the *gullee*.

"In any circumstances, however, the marks of blood are of little importance, as they lead to no certain conclusion.

"The principal questions which arise on the evidence are—*first*, whether Bubur Ali may be implicitly trusted as faithfully relating what he saw? *second*, whether the name of the prisoner was suggested to the deceased before he wrote on the paper. Bubur Ali would naturally have identified the fugitive with the perpetrator in his own mind, and have communicated his conclusions to those about him. But having recognized the man, and having detected him so nearly in actual commission of the crime, it was perhaps his duty to have apprehended him at once, when he found what crime had been committed. The thought may have determined him to say nothing about it till

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the wounded man had been questioned, for fear of being blamed for neglect of duty. There is nothing therefore irreconcilable, or even difficult to account for, in Bubur Ali's statement and conduct. But the witness Chedie, chowkeedar, is represented in his deposition in the thanna on the day after the occurrence, to have said that Bubur Ali told him he had seen a man rush out of the *gullee*, and had pursued him to Longee's dwelling, after which he, Chedie, saw a man come up the *gullee* making a noise in his throat, ; still if that be the case, it may very well have been unknown to the wounded man when he wrote down Bolaki's name that he was suspected, especially as his name had not been mentioned to Chedie by Bubur Ali. I see no sufficient reason, therefore, to suspect that the facts are otherwise than as the witnesses have represented; and consequently Behari Lall's accusation of the prisoner being independent of Bubur Ali's recognition of him, those two circumstances, corroborated as they are by the proof of intimacy between the deceased and Longee, the mistress of the prisoner, and by the fact of no robbery having been committed, are sufficient to prove the prisoner guilty of the murder.

"He had nothing to urge in his defence; and his witnesses merely proved the respectability and inoffensiveness of his general character, with the addition that he was lame before the occurrence.

"This defence does not shake my conviction of his guilt; and finding no circumstances which could form the ground of a mitigated sentence, I am bound to recommend that he should be sentenced capitally.

"I must say a few words regarding some faults and omissions of the officers of police in their inquiry into this matter. No immediate search seems to have been made in Bolaki's dwelling for the instrument of the murder, or for the clothes he had worn the night before. The jemadar, Beneeram, did not even enter his dwelling when he apprehended him, nor cause those who accompanied him to enter it. He may, however, have been actuated by an over anxiety to have the accused confronted with his accuser before the latter died. But the darogah can hardly be excused for postponing the search till day-light, and then, I believe, not thinking of looking for the clothes of the prisoner. It appears, from the map sent in by the officiating magistrate since the conclusion of the trial, that there is a well in the prisoner's house, which ought to have been dragged. The darogah committed a great error in writing the questions which he put to Behari Lall upon one paper, and making him write his answers on a separate one.

"Of the officiating magistrate's proceedings I have only to remark that he should have brought both the above papers promi-

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nently forward in the calendar, as constituting material proofs, and themselves requiring the authentication of the witnesses in the trial."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The proof in this case entirely depends upon the degree of credit due to the dying declaration of the deceased and to the evidence of Bubur Ali, who deposes to seeing a person at 12 o'clock at night, leaving the alley in which the deceased was lodging,—to following him across the road, and to recognizing him as the prisoner. The night was dark, and the witness admits that he did not see the prisoner's face, but recognized him from his gait, stature, dress, with all of which he was familiar, and from the circumstance of his having entered the house he had assigned for the residence of his concubine. From these, the witness may have believed the prisoner to be the man, but that he could swear distinctly to his person in a dark night, in a dark alley, without seeing his face, is highly improbable, if not out of the pale of belief. Again, if he had really recognized the prisoner, the presumption is strong, that he would have mentioned having done so to the chowkeedar, whom he met immediately afterwards, or to the jemadar of the police, or to the witnesses Fuqeer Chund and Ramtuhul, whereas it does not appear that he communicated the fact to any one, until the dying man had named the murderer. For the above reasons I cannot place reliance on the recognition of the prisoner by the witness. There is no reason to doubt the fact of the deceased writing down the name of the prisoner, and identifying him afterwards as the person who cut his throat, and that he believed he spoke the truth; he had no cause of enmity towards the prisoner, and was not likely, '*in articulo mortis*,' in which state he must have known he then was, to accuse him falsely; but at the same time, it is to be borne in mind, that the act was done in a dark room, and must have been done suddenly, when the deceased was in a recumbent posture. The identity of person is oftentimes a subject of mistake, and might have occurred under such circumstances in this case; at any rate, I do not think it would be safe, without some strong corroborative proof of the deceased's dying declaration, to ground a conviction upon it. I, therefore, acquit the prisoner, and direct his release."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

ABDOOL RUHMAN.

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Case of ABDOOL RUHMAN.

The prisoner was convicted of embezzlement by the sessions judge, but was acquitted by the Nizamut Adawlut on the grounds that the system followed in the office, sanctioned the application of money taken as rent to the prisoner's private use, and it was not proved that the money was received as revenue which the prisoner could not legally touch.

CRIME CHARGED.—Embezzlement of certain sums of money belonging to Government abkaree revenue.

Committing Officer, Mr. E. F. Radcliffe, officiating joint magistrate of Noakhally, Tipperah.

Tried before Mr. H. Stainforth, sessions judge of Tipperah, on the 28th November 1851.

Remarks by the sessions judge.—"The *mooftee* has acquitted the prisoner altogether, and it is in consequence of my differing from him in respect to the 2nd count of the charge against him, that this reference is made.

"This count sets forth, that he collected 18 rupees, 8 annas, as Government abkaree revenue, and embezzled the same.

"He pleaded 'not guilty,' and alleged that though he had realized the money from Sumbhoonauth, it was due to him on account of money previously paid by him from his own resources on behalf of Sumbhoonauth as revenue.

"He produced no evidence whatever to show that the 18 rupees, 8 annas, which he admits to have received from Sumbhoonauth, was realized on account of money due to him. Sumbhoonauth has sworn that no money was due from him to the prisoner; that the 18 rupees, 8 annas were paid by him as revenue, *i. e.* the *kist* for November; and that after he, Sumbhoonauth, had been called on by the new darogah appointed in the prisoner's place, to pay again the *kist* for which he produced the prisoner's receipt for the money, which is attested, the prisoner refunded part of the money to him, and gave him *hisab* or memorandum for the rest.

"Mohesh Chunder, the abkaree mohurir, has proved the official account-book kept by the prisoner, and that the sum of 18 rupees, 8 annas, which he is accused of embezzling, is not credited in it.

"The evidence is discrepant as to whether the *hisab* was executed on the day on which the money refunded in cash, was returned; but it is admitted that 18 rupees, 8 annas was received. It is, in my opinion, proved that it was for the November *kist;* and it is proved to have been omitted to be credited in the account-book kept by the prisoner, and refunded, as described, after his offence had come under the cognizance of his successor.

"Under these circumstances, I am of opinion, that the pri-

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soner is guilty of the embezzlement described in the second count of the charge preferred against him, and that he should be sentenced to two (2) years' imprisonment with labor."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner's defence is, that he received the sum of 18 rupees, 8 annas, in liquidation of money advanced to the account of the *pottadar* in some months preceding. The receipt produced by the *pottadar* is of a very informal nature, and may be taken either as a receipt for a private debt or for public revenue, but as it is clear that the prisoner had money transactions with the *pottadar*, and such objectionable practice had the countenance, if not the sanction of the head of the office, inasmuch as the system (which is proved to have prevailed), of realizing the Government dues by deducting the amount of balance owing by the abkars from the salary of the prisoner, allowed the prisoner to do what he pleased with the rents, I do not think the prisoner can be held criminally responsible for applying the sum to his private use. I, therefore, acquit him and direct his discharge."

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The prisoners were convicted of being accomplices in a murder on strong circumstantial evidence; as there was no proof by whose hands the murder was committed, three prisoners were sentenced to imprisonment for life in transportation, and one to fourteen years' imprisonment in banishment.

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

SREEMOTEE JOHOORUN MUSSULMANEE

versus

SHEIKH MOHUSUN (No. 3), MEER PUNCHOO (No. 4), RUHMOO (No. 5) AND HARAN MALLEE, (No. 6).

CRIME CHARGED.—1st count, wilful murder of Hossein Buksh, son-in-law of the prosecutrix; 2nd count, being accessaries after the fact in the above wilful murder.

Committing Officer, Mr. S. Wauchope, magistrate of Hooghly.

Tried before Mr. C. W. Steer, officiating sessions judge, on the 28th November 1851.

Remarks by the officiating sessions judge.—"The prisoners pleaded 'not guilty.'

"Sreemotee Johoorun, the prosecutrix, mother-in-law of the deceased, and living in his house, deposes that on the night of the 20th November, the deceased left his house at about 7 o'clock, saying, that he was going to the Hooghly *imámbara*, that he did not come home again, and that the next morning she heard that the deceased was hanging on a tamarind tree, just outside the garden wall of the prisoner's house, in which state the prosecutrix went and saw him.

"Witness No. 1, Sreemotee Motee, the most material witness, deposes to the effect that she was a servant in the pri-

soner's house. That on the 20th November 1851, she was in the only upper room of the house with the prisoner, Sheikh Mohusun, the door locked. At about 11 o'clock, her husband, Hossein Buksh, having ascended the premises by a bamboo ladder, suddenly presented himself before the door of the upper room, which he immediately commenced to hack with a *kulharee* he had in his hand. Witness then undid the door, when the deceased struck her a blow with the hatchet on the head, which knocked her down. The prisoner Mohusun attempted then to get outside the room, and began calling out 'thief, thief:' the hatchet was immediately applied to his head, but after one blow the prisoner succeeded in getting hold of it. The deceased then seized the prisoner Mohusun with one hand by the throat, and was so holding him, when Punchoo, prisoner No. 4, a servant of the prisoner Mohusun, came up stairs, and went to his master's rescue, and the deceased was thrown down. Haran Mallee, prisoner No. 6, another servant, joined Punchoo at this moment, when the latter, cutting away a rope which was suspended from the wall, he and Haran together tied the hands of the deceased. Seeing this, the witness went down stairs into the room under the upper story, and after a short space, she asked from there what had become of the deceased, when the prisoners told her that he had run away. The prisoner Ruhmoo, No. 5, carried a lamp up stairs before witness came down. The witness says, that when she went down stairs, her husband had received no injury whatsoever—she did not see by what way he made his escape, or how he was conveyed out of the house. When the prisoners came down stairs, Sheikh Mohusun bathed himself, and then started off with Punchoo to the *imambara*. They returned with the darogah and others that night, and in the morning early, it was reported to the witness that the deceased was hanging to a tree, in which position witness went and saw him.

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"Witness No. 9, Sheikh Bhoondoo, son of the witness Sreemotee Motee, and also a servant residing in the prisoner Mohusun's house, deposes that he slept in the lower room nearest the staircase, together with the prisoners Punchoo, Ruhmoo, and Haran Mallee; that he was awoke out of his sleep by an uproar up stairs, that he was going up when he met his mother descending with a wound on her head, which she said her husband had inflicted. The mother and son then went together inside the room immediately below the upper room, when the witness burnt some rags, and applied the cinders to his mother's wounds. Presently, that is, about half an hour after the uproar first took place, all four prisoners came into the room where witness and his mother were, and after the prisoner Mohusun had bathed, and Punchoo had washed his clothes, they with Haran Mallee left the house.

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"Witness No. 10, Lutfun Mama, a female servant of the chief prisoner, deposes that she was asleep in the room immediately below the upper room, and her master and Sreemottee Motee were up stairs. At about 11 o'clock she heard an uproar up stairs, and her master calling out to Punchoo. The servants then who were sleeping below ran up stairs and Sreemotee Motee came down, and blood was flowing from her head; half an hour after the prisoners came down stairs, and said that Hossein Buksh had escaped. The witness then became much alarmed and fled to a neighbour's house, where she remained till daylight.

"Doorga Singh darogah, witness No. 2, deposes, that on the night of the 20th November, Mohusun, prisoner No. 3, with a hatchet in his hand, and Punchoo, prisoner No. 4, came to him, and the former reported that Hossein Buksh had entered his house with the intention to steal, and had, after wounding him, run away. The darogah took down on oath what Mohusun had to say, and then started off with him for Mohusun's house. They arrived about 3 o'clock; the darogah saw the marks of the hatchet on the door, and on the door being unlocked by the prisoner, the darogah observed on the carpet and bedding which were spread on the ground a great quantity of blood. On questioning Mohusun how the blood got there, he said that he and Sreemotee Motee had slept down stairs, and that on hearing the deceased apply his hatchet to the door of the room up stairs they both ran up, when they were immediately wounded by the deceased, and that the blood which was inside the room was what fell from himself and Sreemotee Motee. The darogah, seeing that the slight wounds of the prisoner Mohusun and Sreemotee Motee, were not sufficient to account for the marks of all the blood he saw, strongly suspected the truth of Mohusun's statement, and began to look for Hossein Buksh, who he thought would soon clear up the mystery. About half an hour after this, when it was just dawn, Roopchand Chowkeedar went to him and reported that the body of Hossein Buksh was hanging on a tamarind tree outside the prisoner's compound. The darogah then went and saw the body hanging, and observed the wounds on the forehead, which, leading him to think that Hossein Buksh had been first murdered and then hung up, he ordered the prisoner's house to be surrounded, and every one in it to be secured. Mohusun had, however, slipt away, and gone to the *imambara*, whence the darogah brought him back. The darogah could get no evidence from any one, and he had made every one he found in Mohusun's house, prisoners. As he was about, however, to forward all the parties to the magistrate, the witness Sreemotee Motee told him that she was willing to tell him all she knew. As the proceedings were completely finished, the darogah refused to

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record what Sreemotee Motee wished to say, and told her she might tell it to the magistrate. The darogah further deposes that the body was hanging in such a way, and the rope was tied to the tree in such a manner, that it was quite impossible the deceased could have hung himself. The wounds on his head moreover quite satisfied him that the hanging was the work of some one else.

"Doctor Ross's deposition is as follows:

"'I did examine the body of Hossein Buksh on the 21st November 1851, and from the morbid appearances, I am of opinion, 'that the cause of death was by his being stunned or stupified 'by blows on the head, giving rise to profuse hæmorrhage, and 'while he was in that state of insensibility or stupor he was 'suspended or hung by the neck for a number of hours, till life 'was extinct. The marks on the neck showed that he was not 'lifeless, when he was first suspended, but he must have been 'very near it, as the mark on the neck had not the perfect 'characteristic parchment-like appearance which invariably 'exists where death has occurred from hanging exclusively. 'The lungs and heart also did not exhibit the morbid signs 'which are the results of hanging—there was no gorged state 'of the vessels of the lungs, and the heart was completely empty 'of blood. There were various marks, scratches and abrasions 'on the surface of the body, more particularly on the arms; the 'outer skin of the right wrist had been scraped off by some 'means, either by having been tied by a rope, or dragged over a 'rough surface. The two first fingers of the right hand had 'been removed some years ago. The remaining stumps of the 'fingers were permanently bent towards the palm, and presented 'the perfect antagonism between the thumb and the remaining 'fingers, so that he would be more easily overpowered by his 'assailants, and the same mutilation would prevent him from 'adjusting the rope with which he was hung with the accuracy 'I observed. The blanched state of the brain, the tongue and 'the gums, go far to prove that he was in too weak a state, from 'loss of blood, to have hung himself; the weapon which was 'probably employed was of a bluntish nature (if at all of a 'cutting character,) as the wounds were much contused.

'*Question.*—Then you saw the body hanging?

'*Answer.*—Yes.

'*Question.*—From your observation do you think it possible, 'if the deceased had been in a fit state to do so, that he could 'have suspended himself?

'*Answer.*—No, not alone and unaided. The rope was tied to 'a lower and upper branch, these could not have been adjusted 'by him in any other manner than by standing on the wall, 'from which he was too far. The place where the rope was tied

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'to the two branches was inclining away from the wall, and 'away shortly from the trunk of the tree; the distance, and the 'trunk of the tree render it impossible that the deceased could 'have tied the ropes himself. The only way that the hanging 'could have been effected was by others, either on the wall and 'tree, or on the tree only. There was a quantity of blood 'between the wall and the tree, particularly well marked on pieces 'of broken pottery.

'*Question.*—Is this hatchet a likely instrument to have made 'the wounds you speak of?

'*Answer.*—Yes, the back of the hatchet, on which there are 'still marks of blood, was probably used.'

"There were other witnesses to the apprehension of the prisoners, to the *sooruthal*, and to matters circumstantial, of whose depositions it is not necessary to give any epitome.

"The defence of the prisoner No. 3, Sheikh Mohusun is as follows.—'In the upper room in which I generally reside, is an 'almirah, where I keep my money and valuables, from this I take 'out money for my daily expenses. Both the witness Sreemotee 'Motee and her son Bhoondhoo know this. Some days ago, I 'was a little unwell. The *mutwullee* advised me to go to Calcutta 'for advice. I told this to Punchoo, prisoner, the same evening, 'and told him he was to look well after my almirah, as I intended 'to start for Calcutta, after the meeting that was to take place the 'next day at the *imambara*. This conversation was heard by 'Sreemotee Motee; the next day the meeting took place at the '*imambara*, but the *mutwullee's* cutcherry being closed, I could 'not take my leave that day, and I accordingly remained at home. 'About this time, Hossein Buksh asked me to lend him a little 'money on the pawn of some silver trinkets. I told him, I would 'after pay day, and at the same time, he got the information, that 'I purposed a visit to Calcutta. On the night of the 20th of 'November, being under the impression that I had gone to Cal'cutta, he got into my compound, and commenced to cut down 'the door of the upper room. Hearing this from below, where I 'was sleeping, I ran up stairs, and seeing Hossein, I asked him, 'what business he had in my house, and threatened to call the 'chowkeedar, and have him seized. On this, he threw some 'pounded pepper on my face, and I, putting my hands to my 'eyes, cried thief; he then struck me with a hatchet on the fore'head, I cried out. On this, Sreemotee Motee first came up stairs, 'and then my servants. Hossein then wounded Sreemotee Motee, 'and again came to attack me. I caught the hatchet and held it; 'he then took me by the throat, but my servants coming to my 'help, he left the hatchet in my hand and fled. I then unlocked the upper room door and entered it, and Ruhmoo brought a light. My forehead bled a good deal, and covered the carpet, &c.

'Being a foreigner, and ignorant of what I ought to do, I consulted 'Punchoo: he advised my going to the *mutwullee*. I then went 'down stairs in the room below, where the women were, they 'begged me to remain at home, but after bathing and washing 'myself, I took Punchoo, and started off for the *imambara*. While 'talking to the *imambara* servants, the *mutwullee* heard my voice, 'and called me to him. I told him all that had happened, and he 'told me to go to the thanna, and acquaint the darogah, which I 'did accordingly.'

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"The prisoner then describes what happened after this, none of which being of the slightest consequence to his defence, it is needless to detail it.

"The defence of the prisoner No. 4, Meer Punchoo, is, that he heard a noise up stairs; that he was going to see what it was about, but before he got up, the deceased Hossein had fled.

"Ruhmoo's defence is, that he knows nothing whatsoever of the affair, and that he had no concern in it whatever.

"Haran Mallee's defence is to the same effect as Ruhmoo's; he adds, that he saw the body of the deceased hanging on the tree, the next morning.

"None of the prisoners name any witnesses in support of their defence.

"From the whole of the evidence, it is as clear as it can be, that the deceased did not wound and hang himself, but that he was murdered. The great question is, whether the evidence is sufficient to bring home the guilt of that murder to the prisoners, or to any of them.

"The witness No. 1, Sreemotee Motee, is, in my opinion, to be relied on as having stated what is the truth; perhaps she has not stated the whole truth, but that is mere opinion. What she has said there is every reason to trust; her story is corroborated by the witnesses Nos. 9, Sheikh Bhoondoo and 10, Lotfun Mama, and accords in a great measure, and especially in small points, with the prisoner's account of what took place. From Sreemotee Motee's deposition, and from all the facts of the case, it would seem that the deceased, having by some means learnt the state of things between his wife and the prisoner, determined on revenging the disgrace and injury which his own imprudence, in trusting his wife in the prisoner's service, ought to have told him was unavoidable. Having armed himself with a hatchet, bent perhaps on a double murder, and getting by a ladder up to the terrace of the upper room, he, no doubt, little expected such an impediment to the gratification of his designs as finding the door closed. He would soon, however, have effected an entrance, for the door was a weak one, but it was opened for him by his wife. His passion cannot keep his hand from striking her, but it is the adulterer against whom his vengeance is directed.

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Being maimed of one hand, and his first blow not taking the effect he intended, he finds, instead of being revenged, that he is soon overpowered, and made the victim of a murder, where he expected to be himself the slayer. It was when he was overpowered, that those wounds on his forehead were most probably inflicted, for Sreemotee Motee, who went down just as her husband was bound, says, up to that time no injury had been done him. It is for the prisoners to account for what became of him. In their grasp he was seen last, and in a state when escape was out of the question. They can give no other account than that he ran away. That he could in that state have effected his escape, and wounded himself, and then hung himself, is utterly out of the pale of belief; there is, therefore, no other inference to be drawn, but that he was killed outright on the spot, or that he was conveyed in a senseless and apparently lifeless state to the tree outside the compound, and then hung. There is no direct evidence to prove this, but the circumstantial facts with which the case abounds, do, in my opinion, more indubitably prove that the prisoners were the murderers, than as if all the witnesses had sworn they saw them do the deed.

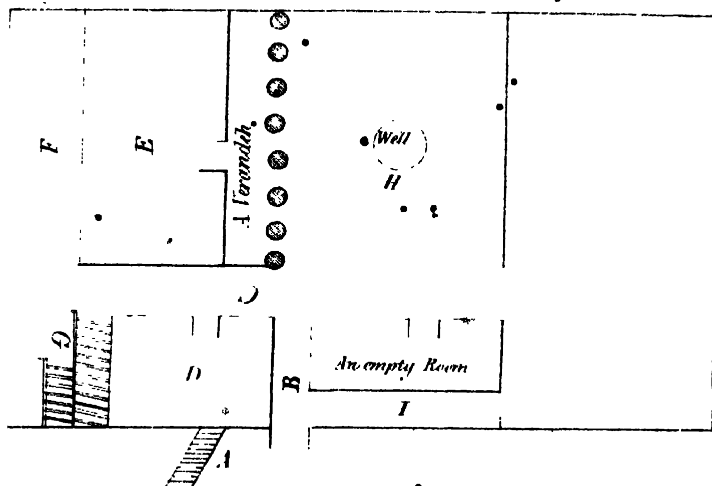
"Doctor Ross has deposed that the deceased received the wounds before he was hung up; that it was quite impossible he could have run or made his escape after receiving them, and that it was equally impossible, even if the deceased had desired it, that he could have hung himself in the manner Doctor Ross saw him suspended the next morning.

"There was more blood in and about the room, than could have fallen from the insignificant wounds which the prisoner Sheikh Mohusun and Sreemotee Motee received. There were marks of blood not only down the staircase, where they might have fallen from the prisoner's wound, but in the little passage leading to the garden, where the prisoner had no business to go, and where he does not even say that he did go. There were marks of blood also on the garden wall by the tree, and also marks of a man's foot on the trunk of a tree inside the garden.

"It may strike one as singular that neither Sreemotee Motee nor any one else, saw the body of the deceased carried out, seeing that they were down stairs, and it had to be carried that way. It must be remembered, however, that a murder was going on, the persons below were women and a boy, and nothing is more natural, than that they remained purposely inside the room that they might not be spectators of the dark deed—the more so, as the murdered man was the husband of one witness, and father of another. But it is also very probable that the witnesses did not see the body carried out, and it is only necessary to look to the position of the room in which they were at the time, to see that such might be the case.

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"I subjoin, therefore, a map of the premises in which this fact will clearly appear.



A. The ladder by which deceased got up on the roof of room *D.*
B. A passage roofed in.
C. A ditto ditto.
D. A room in which the servants Purrhoo and others slept, and witness No. 9 Bhoondoo.
E. A room immediately under the upper room, in which Sreemotee Motee went and her son after she came down stairs.
F. A court-yard.
G. The stair-case to upper room above *E.*
H. A court-yard.
I. An unroofed passage leading into the garden.
J. The garden.
K. The tree where deceased was found hanging.

"That the deceased could not have hung himself has already been remarked. The doctor and the darogah saw the body suspended, and say that was impossible; indeed the very fact of the string being fastened to two branches, one over the other, more than three feet apart, is sufficient of itself to set that point at rest. I also went to the place, and have not a moment's hesitation in saying, that it would be utterly impossible for any one by himself and unaided, to have tied himself to the two branches. Had the wall been touching the tree, the difficulty would still be very great, but the tree is three feet from the wall, and any one standing on it and attempting to adjust a rope on any of the

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branches, could have only used one hand for the purpose, for without resting one hand on the tree to support the body leaning over, the other hand could not reach it to make a noose over any of the branches, so that for any one to have hung himself in the manner the deceased was found, is morally impossible.

"The doctor has deposed that life was not extinct, but nearly so when the deceased was hung up. If so, the immediate cause of the murder was the hanging. But I am inclined to think that, if there was any life existing when the body was hung up, there was no appearance of it, the probability is that the blows killed him, or rendered him to appearance dead, and the body was hung up as well to get rid of it, as that it might be thought that the deceased had committed suicide.

"The jury have found all the prisoners guilty of wilful murder.

"Of the guilt of the prisoners, I entertain not the slightest doubt; but who dealt the blows, and whether one and all the prisoners conveyed him to the tree and there completed the murder, is, and must remain, a mystery. There is, however, the utmost circumstantial evidence to show that all four prisoners were present and more or less concerned in it. The murder could be no otherwise than wilful. Sreemotee Motee saw her husband bound and helpless in the hands of the prisoners No. 3, Sheikh Mohusun, No. 4, Meer Punchoo and No. 6, Haran Mallee. In that state he was murdered. It is no palliation to say that he was the aggressor; the blows which killed him were not given in mutual fight, or in self-defence. It may be that the prisoner's blood had not cooled when the blows were inflicted on the deceased, but any blows given under the circumstances were wanton, and being applied with such power and with such a weapon, shows that nothing but murder could have been intended, while the after-hanging completes the tragedy, and leaves not the slightest prop whereon to hang a doubt.

"There is, however, some doubt as to the part which Ruhmoo may have taken in the affair. Sreemotee Motee says he took up a light, and he was, therefore, without doubt, present, while the murder and all its concomitants were going on, but he may not have gone up till the blows were given, and I consider him entitled to the benefit of this doubt.

"I would convict the prisoners No. 3, Sheikh Mohusun, No. 4, Meer Punchoo and No. 6, Haran Mallee, of being accomplices in the murder in the first degree, and sentence them each to imprisonment in transportation for life, and Ruhmoo, prisoner No. 5, as an accomplice, in the second degree, to fourteen (14) years' imprisonment in banishment."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"The sessions judge has fully and fairly set forth

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in detail the circumstances of the case, and I concur in the view he has taken of it. I see no reason to doubt the truth of the deceased's wife Sreemotee's statement. It is clear and consistent: it is corroborated by the testimony of her son and the female servant Lotfun Mama, and exhibits a strong and well-connected chain of circumstantial evidence against the prisoners. The fact of the prisoner having a criminal connexion with Sreemotee, the coming of the deceased armed with an axe to revenge himself upon the guilty pair, his finding them in the room with the door locked, his wounding his wife, and then the prisoner, though but slightly, on the door being opened, his overpowering the latter, and his being overpowered and bound in turn by the prisoner Punchoo, who, joined by the other prisoners, came to the prisoner Mohusun's rescue, and lastly, his being found in the morning suspended from a tree with contused wounds of a severe nature on his head, are circumstances, which, taken with the surgeon's opinion that he could not have made his escape after receiving the said wounds, that he was not lifeless when he was first suspended, and that he could not, from the manner in which the body was found hanging, and from the position of the tree, have hung himself, even if he had been in a state to do so, afford the most violent presumption against the prisoners.

"The witness Sreemotee deposes that she left her husband in the hands of the prisoners uninjured, and the quantity of blood in and about the room, showed that the blows were struck up stairs; it is to be presumed, therefore, that the homicide was deliberate and malicious; but as there is no evidence of the particulars or causes of the murder, and there is no proof by whom the blows were struck or who counselled the murder, I convict the prisoners of being accomplices in the wilful murder of the deceased, and sentence Mohusun No. 3, Punchoo No. 4, and Haran No. 6, to imprisonment for life in transportation, and Ruhmoo to fourteen (14) years' imprisonment in banishment, as recommended by the sessions judge."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

MADHUB POTEDAR

versus

GOPAUL BAGTEE (No. 41), SONATUN BAGTEE (No. 42), BACOO BAGTEE (No. 43), BURRO BHYRUB BAGTEE (No. 44), DHUNNA BAGTEE (No. 45), MUDHOO BAGTEE (No. 46) AND MOHUN BAGTEE (No. 47).

1852.

January 7.

Case of GOPAUL BAGTEE and others.

On a conviction of dacoity, the sentence passed by the sessions judge, was approved by the Nizamut Adawlut.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor on the night of the 21st September 1851, attended with wounding the village chowkeedar, by name Noboo Lohar, and plundering therefrom property valued at rupees 1,171-13-6; and 2d count, taking and having in their possession property, knowing the same to have been acquired by the abovementioned dacoity.

CRIME ESTABLISHED.—Nos. 41 to 46, dacoity with wounding and plundering property to the value of rupees 1,171-13-6, and No. 47, accomplice to the above dacoity.

Committing Officer, Mr. J. C. Dodgson, joint magistrate of Gurbettah, West Burdwan.

Tried before Mr. C. Garstin, sessions judge of West Burdwan, on the 13th November 1851.

Remarks by the sessions judge.—"This is a serious case of dacoity, attended with wounding, of which the particulars are as follows. On the night of the 21st September last, the house of the prosecutor (who is a *mahajun*, residing in mouza Paikpara,) was attacked by a gang of dacoits, who carried off from it a quantity of property valued at rupees 1,171-13-6. Whilst the gang were employed in robbing the house, they were attacked by a chowkeedar named Noboo, who succeeded in wounding at least two of them; but unfortunately was also himself very severely wounded in return, and after this, no further opposition being offered, they all got clear off. As it was known that some of the gang had been hurt (for marks of blood were visible on the road for some distance) a good look-out was kept for any wounded men. It was also ascertained by the *ghatwals* that, on the night of the robbery, several men (prisoners Nos. 41, 42, 43, 44, 46 and 47) had been absent from their houses in Gopalpore on this night, in consequence of which they were suspected and eventually taken. Gopaul Bagtee, No. 41, was taken up in some jungle, four or five coss from his house, and when taken he was found to have a wound (cut) on his left hip. The other prisoners were

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taken at or near their own houses. Gopaul Bagtee when taken denied his guilt, and said that his wound had been caused by a fall; but his wife, as well as those of the prisoners Sonatun Bagtee No. 42, and of another man named Gopaul Khyrah (who has absconded wounded), all admitted that the prisoners had gone to the dacoity, and these women also pointed out where a number of stolen articles (pots, &c.,) had been concealed, in a hole full of water, and after this the prisoners also confessed their guilt, and spoke (as did the woman) of the prisoner Dhunna Bagtee, No. 45, as having been concerned in the dacoity and he, also, when captured, confessed. Before this, however, Gopaul Bagtee, No. 41, had been sent in to the magistrate, and to that officer he confessed his guilt, and said, that he had been wounded by the chowkeedar, and by the time he had been sent back to the Mofussil, most of the others had also confessed to the police, and had all generally admitted that the things found had been placed in the hole pending an opportunity of dividing them. They were then sent in to the magistrate, and to him they likewise confessed that they had been engaged in the affair. Whilst these inquiries were going on, the prisoner Hurree Baouree, No. 40, was taken up at night by a dawk hurkarah who met him running away with a sword in his hand, and though it is possible that he really had been engaged in some theft or other bad action (indeed his statement to the darogah almost proves this), still as there is no proof whatever that he had been engaged in this particular dacoity, he has, of course, been acquitted of it. On their trial all the prisoners deny their guilt, but say nothing to disprove the strong case against them; and as the Jury are unanimous in convicting them, I have, in concurrence with their verdict, sentenced them as noted above, giving Gopaul Bagtee, No. 41, a more severe sentence than the others, inasmuch as there is strong reason to believe that he was one of the leaders of the gang upon this occasion.

"I have deemed it my duty in this case to direct the joint magistrate at Gurbettah to make some inquiry as to the case of Musst. Sohochurree, the wife of Gopaul Khyrah. This witness deposed to the magistrate on oath that Gopaul and all the prisoners had been in the dacoity, and that the stolen property was concealed in the hole; whereas to me she denies ever having said anything of the kind, and says that she knows nothing whatever of the case."

Sentence passed by the lower court.—No. 41, fourteen (14) years' imprisonment with labor in irons, in banishment; Nos. 42 to 46, each ten (10) years' imprisonment, with labor in irons, and No. 47, five (5) years' imprisonment with labor and irons.

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Case of Gopaul Bagtee and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed; but have urged nothing in refutation of the strong evidence against them; they made free and voluntary confessions before the police and the deputy magistrate, which were confirmed by the finding of a portion of the stolen property, and the general circumstances of the case. I see no reason for interference."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

BYAKOOL SHEIKH

versus

SHEIKH NEELOO MAHOMED (No. 1) AND MUSST. RASHOO PESHAGUR (No. 2).

1852.
Jan. 7.
Case of Sheikh Neeloo Mahomed and another.
On a conviction of culpable homicide, the sentence passed by the sessions judge, was approved by the Nizamut Adawlut.

Crime Charged.—Culpable homicide of Musst. Keyshoo Ourut.

Crime Established.—Being accomplices in culpable homicide.

Committing Officer, Mr. R. C. Raikes, magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 20th November 1851.

Remarks by the sessions judge.—"Prisoner No. 2, a prostitute, having made a complaint against Ruttee Sirkar (who is a connexion of, and lives close to, the prosecutor's,) took out a subpœna for her witnesses, and besides the *peada* took other men, including No. 1, with her, when going to serve it, and although the prosecutor was not one of her witnesses, pointed him as one of them, on which he ran into the house. No. 2 first tried to follow him, but was opposed by his mother, an old woman, who sat at the door, and put her arms across the doorway, on which No. 2 kicked her on one side. She immediately in the same manner tried to prevent No. 1 going into the house, when he also kicked her on one side and took off the prosecutor to the *peada*, who released him on finding that he was not named in the subpœna, and on getting back to his house he found his mother was dead. The prisoners and the body were at once sent to Serajgunge by the villagers, and the prisoners admitted having done as above stated. The next day before the assistant they denied having struck the deceased; but the fact is proved, not only by their confession but by the evidence of three eyewitnesses. From the report of Mr. Taylor, apothecary at Bogra, it appears that the spleen, which was diseased, had been ruptured, but from the state of the body he could not state the

exact cause of death. Before this court both prisoners denied having struck the deceased, and named witnesses to prove it, who rather proved the contrary. The *futwa* of the law officer convicts the prisoners of being accomplices in the culpable homicide of the deceased, in which I concurred; and as repeated blows were not inflicted, or any weapon used, I consider the sentence passed sufficient."

1852.

January 7.

Case of SHEIKH NEELOO MAHOMED and another.

Sentence passed by the lower court.—Each to six (6) months' imprisonment and a fine of rupees (20) twenty, or, in default, to labor suited to their sexes.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"The deceased was an old woman, she opposed the illegal entrance of the prisoners into her house, and was struck by the prisoner Neeloo and kicked by the prisoner Rashoo, she fell down, and died shortly afterwards. The apothecary states that the spleen was ruptured, which was the *probable* cause of death. The evidence to the assault is clear against the prisoners, and the presumption is strong that death ensued from it. I see no reason to interfere with the conviction and sentence."

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

JUGGUN (No. 1.)

1852.

January 8.

Case of JUGGUN.

Capital sentence passed on a convict in the Moulmein jail, convicted of murder of a jemadar of the jail police.

CRIME CHARGED.—Wilful murder—In having, on the 24th day of November 1851, about six o'clock in the evening, in the Maulmein Jail Hospital, wilfully and of malice aforethought, stabbed with a knife Dost Mahomed, convict jemadar No. 280, in the abdomen, thereby inflicting a mortal wound, from which said mortal wound the aforesaid Dost Mahomed died on the 26th day of November 1851.

Committing Officer, Capt. J. P. Briggs, officiating magistrate and assistant to the commissioner.

Tried before Lieut.-Col. A. Bogle, commissioner of the Tenasserim Provinces, on the 18th December 1851.

Remarks by the commissioner.—"The prisoner Juggun is a convict transported for life, for dacoity attended with the murder of two persons. He lately took a prominent part in a revolt of convicts, which occurred at the Government Coal Wharf at this place, when a number of convicts who were engaged in loading a boat with coal, for the use of the steamer, made a sudden rush at the boat, took possession of it, threw such lascars as there

1852. January 8. Case of JUGGUN.

were on board into the water, pushed off into the stream, and having set sail on the boat, steered towards the Burman shore.

"They were, however, hotly pursued, two were killed and a number wounded, not one escaped. The prisoner Juggun was one of those wounded, he received one gun-shot wound in the cheek, which broke his jaw; another gun-shot wound in the loins, and his right ear was cut off by a *dáo* or sword. He had almost recovered from these wounds, when, on the evening of the 24th ultimo, as the convict jemadar Dost Mahomed was counting the convicts in the jail hospital, accompanied by two other convict jemadars and a tindal, he placed himself at the edge of the platform on which the convicts sleep, and when the deceased came close enough to him, stabbed him in the abdomen, with a small knife, which he had concealed about him.

"The unfortunate man died of the wound two days afterwards, and from the depositions, it will be manifest to the court, that no doubt can exist as to the guilt of the convict Juggun. The case is one altogether without any circumstance of an extenuating character. I, therefore, feel it my duty to recommend that the murderer be hanged by the neck until he be dead."

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.) "There cannot, on the evidence, be the slightest doubt of the guilt of the prisoner, and there is no ground whatever of mitigation. The attack was clearly deliberate, and with a fatal intent. We, therefore, must concur in the recommendation of the commissioner for a capital sentence.

"It is to be noted that there should have been a memorandum, on the record, of the reason of the party, Gopal Tindal, (who was with the two witnesses, Buckah and Hullodhur, and the deceased when the wound was inflicted,) not having been examined, at least before the magistrate. It is proper that the evidence of all parties present at the commission of such a crime, should be taken by the magistrate, for comparison and check if necessary, though it is not requisite that the whole of the parties so examined, should, in the first instance, be sent up as witnesses to the sessions. The sessions judge should have information of their depositions before the police, so that he may send for them, if any point of doubt should arise. In this case, the facts are clear and certain; but there might be instances in which suspicion might arise in the absence of statements from all parties present at the time of the alleged perpetration of a crime."

PRESENT:

J. R. COLVIN, Esq., *Judge*.

REKHA KOORMEE

versus

GHOORA MEEAH *alias* FAIZ ALEE.

1852.
January 8.

Case of GHOORA MEEAH *alias* FAIZ ALEE.

Sentence of imprisonment for seven years, with labor and irons, passed on a conviction of culpable homicide caused by a violent and cruel assault by the prisoner on a child of eight years of age, upheld by the Nizamut Adawlut.

CRIME CHARGED.—Wilful murder of Rajay Ram, a boy, son of the prosecutor.

CRIME ESTABLISHED.—Culpable homicide of Rajay Ram.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, officiating sessions judge, on the 26th September 1851.

Remarks by the officiating sessions judge.—"On the 19th July 1851, the deceased was playing with the prisoner's son and other boys. In the course of their gambols he swung a sling round with a stone in it, and accidently struck the prisoner's son on the head.

"The prisoner, who was sitting at a little distance from the spot, hearing his boy's cry, ran up, and being told what had happened, seized the deceased by the throat, and threw him down, then, again raising him, struck him two severe blows with his fist on the stomach, and then, dragging him along, threw him down at his father's door.

"The child never spoke afterwards, but remained prostrate and almost insensible in his father's house, occasionally pointing to his side, and evidently suffering great pain from the blows. He died the next morning.

"The facts of the assault are clearly established by the consistent evidence of eye-witnesses. The blow given by the sling was accidental; and the prisoner was informed of this by the witnesses, who also remonstrated with him when he assaulted the deceased.

"There is no evidence as to the state of the child between the period of assault and death save that of the father; but this is clear and convincing. His description, uttered under an agony of distress which was painful to witness, is quite convincing, though it would have been still more satisfactory had his testimony been confirmed by the medical evidence. But the body was unfortunately not fit for examination when it came in.

"The verdict of the assessors convicted the prisoner of culpable homicide.

"Admitting that there were some grounds for provocation, and that no deadly implement was used, the assault was still brutal and cowardly. The prisoner is a big and powerful man, and the child was only eight years old.

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Case of GHOORA MEEAH *alias* FAIZ ALEE.

"The defence contained two pleas, one an *alibi*, which was not established, the other that the child died of cholera, a fact which the evidence for the prosecution clearly refuted, and which is by no means sustained by the evidence for the defence."

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"Under all the circumstances of the gross and cruel assault committed by the prisoner on the deceased child, the court see no sufficient reason for interfering with the sentence of imprisonment for seven (7) years with labor and irons, passed by the sessions judge."

PRESENT:

J. R. COLVIN, Esq., *Judge.*

A. J. M. MILLS, Esq., *Officiating Judge.*

EDUN JOOLAHA

versus

DAHOO JOOLAHA.

1852.

Jan. 9.

Case of DAHOO JOOLAHA.

Capital sentence passed on the prisoner, convicted of the murder of his wife from rage and pique at some coarsely irritating expressions, which she had used in a quarrel between them several hours previously.

CRIME CHARGED.—Wilful murder of Musst. Nazo Joolahin, his wife.

Committing Officer, Mr. A. G. Wilson, deputy magistrate of Nowadah, Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 1st December 1851.

Remarks by the sessions judge.—"The prisoner visited the prosecutor, Edun Joolaha, his wife's (Musst. Nazo's) father, inquiring after her, she having left him, as he alleged, in a sulky mood. The prosecutor went in search of his daughter in different directions, as did also the prisoner. At last the prosecutor induced the prisoner to allow his son Deyanut, a little boy of about six years of age, to return home with him to see his relatives there. The prosecutor and prisoner resided in different villages, about half a mile apart. When the prosecutor got the little boy alone, he ascertained from him that his father had murdered his mother and buried her corpse. The prosecutor returning, taxed the prisoner with the murder, and after reporting it to the village authorities went on to the thanna, and on 14th October last, formally deposed to what had thus come to his knowledge, just one week after the atrocious occurrence.

"Darogah Juysureelal forthwith proceeding to the spot, on Bechun (witness No. 8,) the prisoner's brother pointing out, the next day, the 15th idem, disinterred the body of the deceased in the Buryn Nuddee, two miles distant from the pri-

1852. January 9. Case of DAHOO JOOLAHA.

soner's village; and although the body was in an advanced stage of decomposition, yet it sufficiently admitted of identification, as the corpse of the deceased was found, according to the inquest, duly held and verified, with only one unmistakable mark of death by violence, *i. e.*, 'with the windpipe cut through.'

"Bechun (witness No. 8,) and Subrattee (witness No. 9,) the prisoner's own brothers, residing in the same family dwelling, at once acknowledged that the prisoner had killed his wife. Being admitted as approvers under the deputy magistrate's proceedings of 21st October last, they deposed that an altercation had taken place between the prisoner and the deceased on Monday evening, the 6th October last, about her having purloined a little flour, but every one had retired to rest, when, about midnight, they were awoke by the deceased's crying out she was being murdered. On running up, they found the deceased with her throat cut, lying on the mat inside her house, and the prisoner standing by with the common knife of the house, produced in court, in his hands. The prisoner frightened them into silence. They kept the corpse in the house until Wednesday night, when they assisted the prisoner in removing and burying it in the Nuddee, where, as already narrated, it was discovered. Their wives, Musst. Tetree (witness No. 10,) and Musst. Mungeea (witness No. 11,) confirm their husbands' depositions.

"The prisoner, both before the police and magistrate, made full confessions. He acknowledged having deliberately lit a light, and murdered the deceased whilst asleep at midnight, for having abused him during the quarrel the previous evening, and to his having buried the corpse as already stated. Before this court, he revoked his confessions, substituting a worthless unsupported story of his having murdered the deceased after having detected her in an intrigue with one Chumroo Joolaha.

"The *futwa* of the law officer, convicting the prisoner of the wilful murder of the deceased, considers *kissas* barred, owing to the nonage of her heir, the little boy Devanut (witness No. 1,) and by reason of parentage, and declares him liable to punishment for the price of blood by *deeyut*.

"*Kissas*, as a private right devolving on the heirs of the deceased, has been held to be barred by the reason of parentage,—the heir of the slain being the child of the murdered person and also the child of the prisoner,—Nizamut Reports, vol. I., pp. 24, 103 and 231, although in the present instance, the father, the praiseworthy detecter of the outrageous crimes, prosecutes for his daughter's murder. The disposal of the fanciful requirements of the Mahomedan law rests with the superior court. All the facts and circumstances of the case are conclusive, as to the act having been one of the most deliberate character, as deposed to by the other members of the family, so fully acknowledged by

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the prisoner's confessions, and confirmed by circumstances, which may, I think, be positively relied on. The murder was committed in the dead of night. It alone alarmed the residents of the household, and did not disturb the neighbours, who continued altogether in ignorance of the foul deed until brought to light by the prosecutor. The situation of the prisoner's house seems to have facilitated concealment, and the removal of the corpse, as it was open on one side towards the plain.

"Hours had elapsed since the trifling quarrel between the husband and wife. All had retired to rest, when, in the dead of night, the prisoner deliberately lit a light, and as deliberately cut his unoffending wife's throat, whilst she lay asleep. They had lived together for years, and she had borne him several children, the youngest being an infant in arms. The inquest describes her as a person of about thirty-two years of age. There had been no particular domestic disputes between them, and until the prisoner's reckless plea before this Court, she stood accused of no greater fault than that of purloining the food, and abusing her husband. The only excuse set up in the prisoner's confession is, that his wife had grossly abused him. Doubtless abuse of the grossest kind is bandied about in the relations of native families, of which European habits can form but a slight idea. The prisoner is of a bigotted class, as singularly sensitive as they are ignorant. In his confessions before the magistrate he stated, his caste were not in the habit of using abuse. This is doubtless exaggerated; but even were it not so, the doctrine would be as monstrous as the crime itself, which would allow any abuse that could pass between husband and wife to stand, in palliation of such a crime, when committed with deliberate after-thought, as was the case in the present instance, whilst the helpless victim, whose only natural protector the prisoner should have been, lay asleep. Under such heartless circumstances, I look in vain for any grounds which might authorize my urging anything in extenuation of so wilful a murder, or in arrest of capital punishment."

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.)—Mr. A. J. M. Mills.—"The prisoner is clearly guilty of a cruel, deliberate murder, committed under circumstances which admit of no extenuation. The prisoner's plea, for the first time urged at the trial, that he caught his wife in the act of adultery, is unworthy of belief. I am of opinion that he should suffer death."

Mr. J. R. Colvin.—"I concur. The case is one of cruel murder of the deceased by the prisoner, her husband, from rage and pique at some coarsely irritating expressions, which she had used in a quarrel between them some hours previously. There is no ground upon which a mitigated sentence could be admitted as suitable or just."

PRESENT:

J. DUNBAR, Esq., *Judge*.

GOVERNMENT

v.

SYUD JUMAL.

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Case of SYUD JUMAL.

The prisoner was convicted of culpable homicide by stabbing the deceased with a knife during a personal struggle with him, and sentenced by the sessions judge to imprisonment for five years with labor. The sentence was confirmed by the Nizamut Adawlut.

CRIME CHARGED.—Wilful murder of Abdool Jubbar.

CRIME ESTABLISHED.—Culpable homicide of Abdool Jubbar.

Committing Officer, Mr. C. T. Buckland, officiating magistrate of Hooghly.

Tried before Mr. C. Steer, officiating sessions judge of Hooghly, on the 24th October 1851.

Remarks by the officiating sessions judge.—" The prisoner and the deceased were students in the private academy of Moulvee Akbur Shah for imparting instruction in Arabic lore.

" They seem to have made considerable progress in their studies, and to have been rivals. On the 2d of July last, they had an argument, as often happened, on some learned question. To argument came altercation, to altercation followed abuse, and to abuse succeeded blows. At length a struggle and a scuffle ensued, the end of which was that when the combatants were parted, it was discovered that the deceased had received a wound in the chest from a knife, which was found when the contest terminated lying on the ground, and is sworn to by one of the pupils in the same establishment, to be the property of the prisoner. It is a common single-bladed clasp knife, with a broad-pointed blade.

" The deceased died from the effects of the wound, on the 4th September, two months and two days after the day he received it.

" Such is the general tenor of the evidence; and it exhibits what may, I think, be regarded as the correct statement of the affair as it probably happened, though the case was not so favorable for the prisoner when it came from the magistrate.

" The prisoner before the darogah confessed that he wounded the deceased, but affirmed that he had first been wounded by him.

" He repeated the same confession to the magistrate.

" At the sessions he says, there was mutual abuse, then a scuffle; and that during it, the deceased, who held a knife in his hand, got wounded by it in some way or other.

" He called five witnesses to his defence; only one of whom he desired to have examined. This person, No. 13 of the calendar, corroborates the prisoner's statement so far as to say that the deceased received a wound in the scuffle, but in what manner he cannot say.

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"There can of course be no question that the blow was not the effect of accident or misadventure, but of design. It is equally clear that the blow was inflicted by the prisoner. The knife belonged to him; and in the heat of the moment, and regardless of the consequences, he made use of it.

"He acted, however, without any fore-thought, and there seems to have existed no previous malice; but the act was a brutal, and a cowardly one, and the use of the knife was altogether unjustifiable, for the prisoner is a man of sufficient physical powers to defend himself against any unarmed antagonist without the aid of any weapon, nor was its use resorted to when he was getting the worst of it, or to save himself from any desperate extremity to which his opponent, by his superior strength, if he had been superior, might have reduced him.

"There was no such urgent occasion, in which the resorting to a deadly weapon might be some palliation, and as the disposition of that class of men to whom the prisoner belongs, is already naturally too apt to employ the knife, or any other weapon at hand on slight provocation, encouragement must not be afforded for such a practice, by visiting the offence with a punishment which may appear slight. In conformity, therefore, with the verdict of the jury of culpable homicide, I sentence the prisoner to five (5) years' imprisonment with labor, a meed of punishment which I think his conduct richly merits.

"I should observe that the prisoner, who seems to have made himself understood to the darogah and to the magistrate, was either unable or pretended inability to make himself intelligible to me. I thought it advisable, therefore, to appoint some one to interpret on his part, and having learnt from the pupils in the same school that one Mehommud Mustummur could speak Pushtoo, and that he was a person of respectability and reputation, and known to the prisoner, I sent for him. Having satisfied myself that they could converse freely together, and as both were willing, I appointed him interpreter, having previously sworn him to interpret truly and faithfully."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—"The case is a very clear one. The assertion of the prisoner that the wounds were accidental, and which he again puts forward in his petition to this court, cannot be received. The sentence passed by the sessions judge is certainly not a severe one, with reference to the crime of which the prisoner has been proved guilty.

"The sentence is confirmed."

PRESENT:

J. DUNBAR, ESQ., *Judge.*

MULLIKA KYBURTINEE

versus

MUTHOOR CHOWKEEDAR.

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Case of MUTHOOR CHOWKEE-DAR.

The prisoner who was a chowkeedar was convicted of being accessary to dacoity before the fact, and sentenced to ten years' imprisonment with labor in irons.

CRIME CHARGED.—Dacoity in the house of the prosecutrix, on the 30th August 1851, corresponding with 15th Bhadoon 1258, and plundering therefrom property valued at Rs. 62-12.

CRIME ESTABLISHED.—Accessary to a dacoity before the fact.

Committing Officer, Mr. G. T. Buckland, joint magistrate of Serampore, Hooghly.

Tried before Mr. C. Steer, officiating sessions judge of Hooghly, on the 31st October 1851.

Remarks by the officiating sessions judge.—"A dacoity occurred in the house of the prosecutrix on the night of the 30th August last, when property to the amount of rupees 150, according to her account, was carried off. The next morning early, the 31st August, the jemadar of pharee Ghurreettee arrived on the spot, saw and conversed with the prosecutrix, by whom he was told that the Mohullah chowkeedar, prisoner Muthoor, did not make his appearance while the dacoity was going on; but not a word of recognition was then heard. The same evening, a little before dark, the mohurir of the thanna arrived, and then prosecutrix is represented to have informed him of the names of the four prisoners, each and all of whom she distinctly recognized. The witness No. 1, the prosecutrix's mother, deposes to the same effect, and witness No. 2 recognized the prisoner No. 2.

"I place not a tittle of credit on the evidence regarding the recognition; there was no reason why the prosecutrix should not have told the jemadar, and she states, what is equally unaccountable, that she neither told her mother, nor did her mother tell her, that they had either of them recognized the dacoit.

"The prisoner No. 1, however, on being apprehended, confessed before the darogah that on the night of the occurrence he fell in with the prisoner Bholanauth No. 4, and other persons, in all seven, at a tank in the village where the prosecutrix lives, and that he was invited to join them in a dacoity in her house; but that he refused to do so, and immediately set up a shout, on which the dacoits decamped. He states that he was in another *para*, while the prosecutrix's house was attacked.

"Before the magistrate he made a similar confession of privity, and much aggravated his own guilt, by adding, that he purposely

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went to another *para*, in order to allow the dacoits to proceed unmolested, being so actuated from a promise of a share in the spoils.

"Before me he denied, and named witnesses to prove that he was on duty the whole night. But his witnesses say nothing which can be regarded as at all exculpatory on his behalf.

"As I can see no reasonable ground to discredit the confessions of the prisoner, and there being nothing apparent in the proceedings indicating the resort to any unfair or improper means to induce him to confess, and as his absence at the time and place of the dacoity affords a just ground of suspicion, and is confirmatory of what he himself admits in his confessions, I convict him of being accessary to a dacoity before the fact, and sentence him to ten (10) years' imprisonment with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—"The prisoner in his petition of appeal asserts that there was no dacoity; but on turning to his defence, I find that he there admitted the fact, though he endeavoured to exculpate himself. I see no reason to distrust the confessions, and, considering the conviction good, reject the appeal."

PRESENT:

J. R. COLVIN and J. DUNBAR, ESQRS., *Judges*.

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Case of SHEIKH KHOAZEEAH.

Prisoner convicted of murder, and sentenced only to transportation for life, as it appeared that he committed the act upon the impulse of very sudden and violent provocation, at the time when he was under a painful access of fever.

SHEIKH SHOTEEAH
versus
SHEIKH KHOAZEEAH.

CRIME CHARGED.—Wilful murder of Musst. Huneefa.

Committing Officer, Mr. R. C. Raikes, magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 26th July 1851.

Remarks by the sessions judge.—"From the evidence of the prosecutor, the prisoner's father, and the witnesses, his neighbours, it appears that the deceased was a woman of violent character, about thirty years of age, and that constant quarrels ensued between her and the prisoner, her step-son, who is about nineteen or twenty years old, whom she did not supply properly with food, which obliged him frequently to seek it at the houses of the neighbours.

"On the 19th Assar, the prosecutor had gone to borrow *dhan*, and during his absence, the neighbours, witnesses Nos. 3, 14 and

18, were alarmed by the prisoner's calling out he had killed his step-mother, and to tie or apprehend him, and on going up to him, blood was seen upon him, and he was taken to his house, in the yard of which they found the body of the deceased, with the head entirely separated from the body, and the knife with which the crime was committed, lying near. It is one used by Mahomedans to kill animals with, weighs eight ounces, and has a blade nine and half inches in length.

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"On being asked by the persons who apprehended him why he killed the deceased, he said, he had fever, and asking her for fire and water, she did not give it him, but abused him, after which he was lying under a *goodree*, when the deceased came and attempted to cut his throat, upon which he threw off the *goodree*, took the knife from her, and cut her throat. He was immediately taken to the thanna, where, and before the magistrate, he made the following confessions:

"At the thanna, admitted having killed the deceased with the knife, by cutting her throat, and separating the head from the body, and assigned as the cause that before he had had quarrels with her about food; and on that day, having fever, he was lying under a *goodree*, and asking her for fire, she did not give it him, and they abused each other. Afterwards he was lying under the *goodree*, when she came with the knife, and laying hold of him, he got up, took the knife from her, and cut her throat, and that she was also cut in many places, and that he held her throat so as to prevent her calling out.

"Before the magistrate he also admitted having killed the deceased in the manner described, and for the reason above stated, that she was his step-mother, and could not bear to see him or his younger brother, and used to annoy him in every way; that he commenced cutting her throat in the house; and that they struggled out into the yard, where he finished the deed; and that he was not wounded by her.

"The evidence of the civil surgeon proves that death was caused by the head having been separated from the body, which, as well as the other wounds, could have been effected with the knife before the court; that she received fifteen other wounds, —six superficial ones on the back, close to each other, as if it had been frequently struck with the edge of the knife, one on the head, one in the bend of the arm, three superficial ones on the right side of the face and chin, which he considers were made when ineffectual attempts to cut the throat had been made, and the rest on the hand and fingers of both hands, which had the appearance as if made in endeavouring to save herself by laying hold of the knife, and that it had been drawn out of her hand.

"Before this court the prisoner pleaded 'not guilty;' but in his defence said, the deceased used constantly to quarrel with

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him about his food, which obliged him every two or three days to eat at other houses; that he has had fever for five or six months, and that he loses his senses when it attacks him; that that being the day for it, his father told him when he went for *dhan* to lie down, and the fever coming on, he asked the deceased for fire and water, and instead of giving it to him she abused him; that he lay down nearly senseless, when she came with the knife and sat on his chest, and, when she was applying it to his neck, he threw off the *goodree* from his face, and saw her sitting with the knife, which he seized, and when nearly senseless drew it across her throat, which was cut through and separated from the body.

"On account of the illness of the law officer, the case was tried with the assistance of a jury of three of the vakeels attached to this court, who convicted the prisoner of wilful murder, in which I concur; and seeing no mitigating circumstances in the case, for if the deceased had attempted to cut the prisoner's throat,—of which there is not the slightest proof in the way of any wound on his person, and which I cannot believe,—it would be no excuse for the commission of this determined and savage deed, I would recommend that sentence of capital punishment be passed upon the prisoner."

Resolution on the trial of Sheikh Khoazeeah, No. 922, dated 29th August 1851.—(Present: Mr. J. Dunbar.)—"The court, having perused the papers above recorded, observe there can be no doubt that the prisoner committed the murder; but it may be doubted whether he was in full possession of his senses when he did so. The evidence shows very fully that he had for some months been suffering from intermittent fever, and that he was under the influence of that disease on the day of the murder. His father has deposed that on such occasions he did not retain the full use of his senses, and did not even know what he said, and the prisoner, both in his answer before the magistrate, and in his defence on the trial, has distinctly urged the plea of temporary mental aberration. Under these circumstances, particular inquiry regarding the state of mind which the paroxysms of fever induced is essentially necessary, with a view to determine whether the prisoner was, at the time of the murder, fully conscious of what he was doing. For this purpose, the sessions judge will send for Noor Mahomed, Sheikh Gopee, Shakir Mahomed, and others, who were the first to see the prisoner after the murder, as also for a sufficient number of other immediate neighbours of the prisoner, and question them closely as to the effect of the attacks of fever on the prisoner, and particularly as to the apparent state of his mind just previous to, and after, the murder. He will also ascertain from the medical officer, and from the jail and hospital atten-

dants, by examination on oath, whether they have noticed aught since the prisoner has been in jail to lead them to believe that he is even partially deprived of his senses, and the consciousness of what he is doing, while laboring under an access of the fever, from which he is said to suffer. He will then take a fresh defence from the prisoner and require a fresh verdict from the jury, and submit his proceedings, with those now returned, and a report of his own sentiments on the subject, for the consideration and final orders of the court."

Sessions judge's reply to the foregoing Resolution, No. 11, dated 22nd September 1851.—" In conformity with the orders contained in the court's Resolution, dated the 29th ultimo, the depositions of Noor Mahomed and others named therein, as well as that of the other witnesses to circumstances whose depositions had been taken before, except that of witness No. 19, of the civil surgeon, of ten burkundauzes in whose charge the prisoner has been, and of nine persons sent in as neighbours, have been taken on the point of the prisoner's sanity at the time the deed was committed ; and in my opinion nothing has been elicited, though all have been closely questioned, to shake the belief that the prisoner was in his senses at the time, and was conscious of what he was doing. That his father should depose that, when under the influence of fever, he did not retain the full use of his senses, and did not even know what he said, is natural enough, but I do not consider it corroborated by the evidence now taken; and with regard to his having distinctly urged the plea before the magistrate and in this court, I beg to observe that he did so in this court, but I do not consider a distinct plea to that effect was urged before the magistrate where he said 'he abused her and fell down *behosh* '*neai*, when she got upon him, and was about to cut his throat, '&c., &c.' Here I consider the defence contradicts itself; for even taking the defence in this court, in which he distinctly states he had fever and was not in his senses, he goes on to state that she sat on his breast and was applying the knife, even stating where it was brought from, to his throat, when he threw off the *goodree*, &c., &c., which would show complete consciousness; but such statements, though contradictory, would not affect the prisoner's right to acquittal if it had been proved that he was not conscious of what he was doing at the time the deed was committed. The prisoner made no further defence; and, concurring in the verdict of the jury, which convicts him of wilful murder, I am under the necessity of recommending that capital punishment should be inflicted."

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, J. R. Colvin, and J. Dunbar.)—MR. J. DUNBAR.—" This case came first before me. The papers were then laid before

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Mr. Dick. As we are not agreed as to the manner in which it should be disposed of, I proceed to record my own opinion on the subject.

"In my judgment the prisoner is clearly convicted of the crime of murder. He killed his step-mother Musst. Huneefa, by cutting her throat with a knife, and he admitted in his Mofussil confession that he grasped her so tightly by the throat, that she could not cry out, while his determination to make a full end of her was evinced by the fact that he did not stop till he had entirely separated the head from the body. Ordinarily the commission of such a crime would call for the infliction of the full penalty of the law, but there are circumstances in this case which plead for a sentence short of death. It is in evidence that the prisoner is a man of a peaceable temper, and that the deceased was extremely violent and quarrelsome, and was in the habit of vexing and annoying the prisoner. It is clearly proved too that the prisoner had been suffering for months from fever, and that he was laboring under an access of that disease, on the day of the murder. These facts afford reasonable ground for believing the statements in the prisoner's confessions that the deceased was the aggressor, and that he perpetrated the terrible deed without premeditation, in a moment of uncontrollable passion. This is further substantiated by his having immediately called out to the neighbours to secure him, as he had committed a murder. His conduct subsequent to the trial in hospital, as evidenced by the civil surgeon in his supplemental deposition, showed that his head became affected under an access of the fever to an extent sufficient to produce confusion, but not to such a degree as to lead to entire unconsciousness of what he was doing. He must have known that nothing could justify his cutting off his mother-in-law's head. He easily disarmed her, and might have made her over to her husband or her neighbours. With reference to all the circumstances, I would sentence the prisoner to imprisonment for life in transportation."

MR. A. DICK.—"I cannot consider this a case of *murder*, that is, 'killing with premeditated malice.' There is clear proof that the prisoner was of a peaceable mild disposition, and put up with much vexation from the deceased, who was violent and quarrelsome, that he had been long ill of ague and fever, and was suffering severely at the time of the occurrence; that at such times, the mind of the invalid is liable to become confused; moreover the prisoner has in his confessions declared that the deceased assaulted him with the knife while he was lying down, on which he seized her, and cut off her head. It was all the act of a moment. One cut with such a knife by a man exasperated, and in dread of his own life, was sufficient to sever the head. In all this there is nothing of premeditated malice; and the pri-

soner's conduct previously, when he is said to have done all he could to avoid quarrelling with the deceased, and even obtained his victuals away from home, and his agony immediately after and subsequently in hospital, strongly prove the contrary. I would therefore convict the prisoner of culpable homicide; and consider a sentence of fourteen (14) years' imprisonment with labor in irons sufficient for public justice and example."

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MR. J. R. COLVIN.—"The offence of the prisoner is manifestly murder; for, giving him the full benefit of his own statement that the deceased, in the first instance, endeavoured to murder him, he had deprived her of the weapon, and was in no further danger from her when he murdered her. The nature of the wounds, also, as set forth in the deposition of the medical officer and referred to in para. 7 of the judge's letter No. 9, of the 31st July last, is such as to show that the prisoner must have deliberately sought to kill the deceased, who struggled ineffectually to wrest the knife from his grasp.

"The case is, however, one in which I am willing to concur in passing less than a capital sentence. The prisoner probably acted upon the impulse of very sudden and violent provocation, at a time when he was under a painful access of fever.

"The sentence of transportation for life with labor and irons, may, therefore, issue."

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

JOYNATH DEO BABOO.

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Case of JOYNATH DEO BABOO.

The prisoner was convicted of the murder of another man, by cutting him down with a sword.

As the deed was not premeditated, but done apparently on the spur of the moment, under the excitement of excusable passion, he was sentenced to imprisonment for life, in transportation beyond sea.

CRIME CHARGED.—Wilful murder of Haradhun Acharjo.

Committing Officer, Captain G. N. Oakes, 1st class assistant agent Governor General, Manbhoom, Hazareebagh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebagh, on the 9th December 1851.

Remarks by the deputy commissioner.—"The prisoner pleads 'not guilty.'

"*No. 1, witness, Hurree Banerjea,* states that on the 29th Bhadoon last, at about half-past 8 P. M., the deceased, Haradhun Acharjo, said he would go out for a natural purpose. He put on clogs, took a staff in his hand, and went out, and when he

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had proceeded a few paces, witness heard some reiterated sound, whereupon witness and Madhub Thakoor went out, and saw the prisoner Joynath Deo strike the deceased with a sword. Witness and Madhub then shouted 'come out, come out, Joynath Deo 'has killed Haradhun Acharjo,' on which Ram Banerjea and Ramlochun Hujra came out, and witness said to them, 'see, Joynath 'Deo has killed Haradhun Acharjo, and is making off.' They saw him, and called 'Joynath Deo, Joynath Deo,' on which he turned towards them, then turned eastward, then southward towards his own house, when Ramsoonder Banerjea, who was coming on the road, met him, and Joynath Deo being now unable to get to the house, turned towards the north, and having gone a little way turned off westward. By this time many people were assembled, and witness then went and told the Raja that Joynath Deo had killed Haradhun. The Raja then made inquiries and took witness's statement, and brought Haradhun to the police station. After a short time the prisoner was apprehended in his own house, and was put under guard. Fire was brought, and Haradhun was warmed at it. He could not speak, but lay uneasily on his bed, and lingered till 10 A. M. next day. Afterwards, by permission of the Raja, the body was burned. One day in last Bysakh at 10 A. M. the prisoner's concubine, Lubungee Soolunkhia, had come into Haradhun's house, which is close by, and the prisoner having learnt this, came with a club in his hands, and Haradhun having concealed himself in the house, the prisoner sat at the door, and in abusive terms said 'come out, 'I will beat and kill you, be it two months hence, or four months 'hence; whenever I get sight of you I will kill you.' At that time Ram Banerjea and Ramsoonder Banerjea, and Ramlochun Hujra were present, Mudhoosoodun Putnaik, and Nulober Singh Baboo came and took the prisoner away. The deceased was about forty years old. At the time of the murder it was moonlight; it was the first or second day after full moon; prisoner was apprehended immediately after witness's statement was made. The prisoner's house and that of the deceased are within the same enclosure. When prosecutor saw the blow given he was ten or twelve feet distant. This is the true distance (before the police prosecutor said that he was thirty-eight or forty feet distant), prosecutor himself heard the prisoner threaten deceased in Bysakh, and also saw the prisoner's concubine at the house of deceased—she goes about at all times. She was intimate with deceased. She used to be with him often in private.

"*No. 2, witness Madhub Thakoor*—Is the son of deceased. On the 29th Bhadoon witness and Huree, and Probhooram Mahto, and the deceased and Bhyrub Roy were sitting in witness's father's house. At about half-past 8 P. M., deceased said he would go out; and he accordingly put on his clogs, and took a

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staff and went out. When he had got fifteen or twenty feet from the house, Huree and witness went out together, and just then saw the prisoner strike deceased with a sword. Witness and Huree shouted that Joynath Deo had killed deceased, and on this Ram Banerjea and Ramlochun Hujra came out, and joined in the outcry. The prisoner turned, and seeing them, he went towards a *bur* tree, in the shade of which witness could not see what direction he took. The woman and children then fell to weeping, and Huree went to give information to the police. When the Raja and Buxee came, they gave the deceased some water, but he could not speak. They then took him to the police station and tried means to restore him. Witness does not know where the prisoner was apprehended, but saw him that night sitting on a cot and smoking. The deceased was about forty years old. The deceased and the prisoner have had a quarrel. The prisoner has a concubine, one Lubungee Soolunkhia, and the deceased was intimate with her. In Bysakh last Lubungee had come to the house and was conversing privately with deceased, when somehow prisoner got knowledge of it, and came to the house; deceased hid himself and prisoner said some time or other I will kill you. Witness heard this with his own ears. The circumstance was not reported to the police at the time.

" *No.* 3, *witness Ram Banerjea.*—On the 29th Bhadoon, at about half-past 8 P. M., heard a cry of murder, and instantly running out saw Huree Banerjea, who said 'see. Joynath Deo 'has killed Haradhun with a sword and is running away.' Witness then called 'Joynath, Joynath,' and prisoner turned towards him, and then ran off to the eastward. It being moonlight witness recognized the prisoner, who lives close by and is well known to him. Prisoner was eight or nine feet distant at the time. Deceased died next day. Witness proves the record of the inquest. The prisoner had a sword in his hand, and was running.

" *No.* 4, *witness, Ramlochun Hujra, and No.* 5, *witness Ramsoonder Banerjea.*—The statements of these witnesses are to the same effect as that of Ram Banerjea. They also confirm the account of the prisoner having threatened the deceased in Bysakh.

" *No.* 6, *witness Nuttoo Baboo, and No.* 7, *witness Mudhoosooden Putnaik.*—These witnesses confirm the account of the prisoner having in Bysakh last threatened the deceased.

" *No.* 8, *witness Bhairub Roy and No.* 9, *witness Probhooram Mahto.*—These witnesses state nothing material.

" *No.* 10, *witness Lubungee Soolunkhia.*—Is the prisoner's concubine. Knows nothing of a quarrel between the prisoner and the deceased; never went to the house of the deceased. The prisoner never accused her of going there.

" *No.*—,*witness Deboo Burkundauz.*—This witness was summoned by the sessions court to supply evidence of the prisoner's apprehension, which was omitted in the calendar, and appear-

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ed to be necessary. States that on the 29th Bysakh, at abou half-past 8 P. M., witness was at the police station, when Huree Baneerjea came and reported that Joynath Deo had killed Hara Acharjo. Witness was thereupon sent to apprehend the prisoner. On reaching the prisoner's house witness called two or three times but got no answer; witness then went into the house, and found prisoner sitting by some fire. On seeing witness he got up suddenly, and witness taking him by the hands brought him into the street, prisoner then began to tremble; some watchmen came and brought prisoner to the police station. Witness did not ask any question, neither did the prisoner.

"The prisoner in his defence says that at the time of the murder he went with the Raja to the spot, and there the Raja and others held an inquest, and the body was taken to the police station. On the following morning some milk and *methee** was given to the deceased, and he was asked whether Joynath Deo had wounded him. He moved his hand in token of negation. At 4 P. M. when he died, prisoner was taken up, and is falsely accused of this murder, which prisoner has not committed. Hara was prisoner's spiritual teacher. Prisoner will not have any of the witnesses named for his defence examined, excepting Chytun and Mudhoo.

"FOR THE DEFENCE.

"*No.* 25, *Chytun Bhoomy.*—At the time of the murder, witness and the prisoner Joynath, and Mudhoo Baboo, were sitting together in Nukoeree Manji's house, and on hearing the alarm went to the place where Hara was murdered, and saw him lying there. Then the Raja and Koowur came to make inquiry, the Buxee did not come. No one was named as the murderer. Prisoner was with the Raja at the inquiry.

"*No.* 28, *witness Mudhoo Rajpoot,*—came to buy cloth and stopped at the prisoner's house. Having dined and purchased cloth, the day was at an end; and in the evening, witness and Chytun and prisoner were at Nukoor Soolunkhia's house until about 7. P. M. when there arose a noise in the town, and they went out and saw Hara Acharjo lying on the ground. The Raja and Koowur came and asked who was the murderer; but no one answered. The body was then taken to the police station, and prisoner and witness returned to the prisoner's house. The prisoner remained in his house all night. Witness went away in the morning, and does not know when the prisoner was taken into custody. Witness lives four miles from Jypore.

Ram Kanye Rae, *mooktear.*
Sam Lall Dutt, ditto.

"The jury, whose names and occupations are entered in the margin, find the prisoner guilty of wilful murder.

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"I concur in this verdict. The recognition of the prisoner by the witnesses Huree Banerjea, Madhub Thakoor, Ram Banerjea, Ramlochun Hujra, and Ramsoondur Banerjea, is quite possible, as the moonlight at the time stated (13th September,) was sufficient, also that the prisoner was named on the instant, and was immediately afterwards taken into custody, is fully proved. The cause assigned for the murder is probable, and it is proved that the prisoner had some time before threatened the deceased regarding the woman Lubungee. This Lubungee herself denies that any such cause was ever before mentioned; but I do not attach any weight to her denial.

"The prisoner's defence is in fact an *alibi*, which is imperfectly supported by the witnesses whom he has examined. But Nukoor Boolunkhia, in whose house the prisoner is said to have been, was examined by the political assistant, and denied the fact. This witness, the first named in the calendar for the defence, the prisoner has declined to examine. As to the statement regarding the deceased having by signs intimated the prisoner's innocence, a circumstance so remarkable would not only be easy of proof, but could scarcely be concealed. No proof of it has been offered. I do not see any mitigating circumstances in this case; and it is, therefore, my duty to recommend that sentence of death be passed on the prisoner."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—"The investigation in this case was not so full at starting, as it should have been. Had the first inquiry in the Mofussil been more searching, I am satisfied that the case would have assumed a different appearance. According to the evidence on the record, as it now stands, the death of Haradhun Acharjo, is attributable solely to a fixed purpose of revenge, long entertained by the prisoner, because his concubine had once gone to the deceased's house, on which occasion the prisoner had openly uttered threats of vengeance against the deceased. It does not appear to me, however, that the one event can with any reasonable certainty be directly connected with the other. The woman had gone to the house of the deceased in the month of Bysakh, and the murder occurred on the 29th of Bhadoon. Now, if the prisoner had taken such mortal offence at this proceeding, that he was determined to kill Haradhun, there is no accounting for his delaying to execute his purpose for four months, and at last choosing a time and place which made detection almost certain. Haradhun was cut down on the public road, in the middle of the village, when it was bright moonlight, and when none of the villagers had retired to rest. All the circumstances appear to me to show that his death can be satisfactorily accounted for, on grounds of more recent origin, and that it was, in fact, the result of his own imprudence at the time in seeking to establish

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a connexion with a woman under the protection of another man. The witnesses Hurree and Madhub say, that he went out for the purpose of relieving nature, and that he put on his clogs and took a *cudgel* with him. I believe it is not in accordance with the habits of a Hindoo that, on such an occasion, he should have done either of these acts. Hurree also deposed in his first notice at the thanna that he had begged of him not to go out, but if the man were going out thus early in the night in a crowded village merely to relieve nature, such a remonstrance was out of place. The ground plan sent in by the police, shows that the body was found on the road near the house of the prisoner; and Hurree and Madhub both state that their attention was roused by the sound of quick steps, upon which they went outside, just in time for the former to see the deceased cut down by the prisoner. The reasonable conclusion is, I think, that the deceased had gone to the house of the prisoner to meet his concubine, that he had been detected by the prisoner, had fled homewards, been overtaken, and cut down with one blow of a sword. That the prisoner was the man who inflicted that blow, I see no reason to doubt. It is true, that the witness Madhub, who deposed directly to the fact at the trial, said in the Mofussil, that he had not seen the blow given, but the evidence of Hurree, who first went out on hearing the sound of footsteps, and of the several persons who recognized the prisoner when running away, after the deed was done, is clear and consistent throughout.

"After a careful consideration of the evidence, and of all the circumstances of the case, I come to this conclusion;—that Haradhun went to the house of the prisoner for the purpose of meeting the woman Soolunkhia; that being detected by the prisoner, he fled homewards, which caused the sound of footsteps heard by Hurree and Madhub; and that he was overtaken and cut down by the prisoner. The evidence shows that four swords were usually kept in the prisoner's house, belonging to himself and his brothers, so that a weapon was always ready at hand. The deed would appear to have been done on the spur of the moment, under the excitement caused by the attempt of the deceased to establish or renew an intimacy with the prisoner's concubine, notwithstanding that he had fairly warned him to keep clear of her four months before. I convict the prisoner of the murder, but not considering the case one which calls for the infliction of the extreme penalty of the law, I sentence him to imprisonment for life in transportation beyond sea."

PRESENT:
J. DUNBAR, Esq., *Judge*.

GOVERNMENT

versus

MODHOOSOODEN, CHRISTIAN (No. 1) AND MONEE, ALIAS, BAMA BEWA, CHRISTIAN (No. 2).

1852.

January 15.

Case of MODHOOSOODEN CHRISTIAN and another.

The prisoners, a brother and sister, were convicted of incest, and sentenced, the man to be imprisoned for three years, and the woman for two years. The former to pay a fine of fifty rupees, the latter a fine of thirty rupees, in lieu of labor.

CRIME CHARGED.—Incest, that is, the prisoners being brother and sister, have had criminal connexion with each other, which has led to the birth of a child.

Committing Officer, Mr. W. H. Elliot, magistrate of 24 Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24 Pergunnahs, on the 23rd December 1851.

Remarks by the additional sessions judge.—"The prisoner No. 1 received Christian baptism about ten or twelve years ago, and was married eight or nine years ago to a Christian convert. The prisoner No. 2 is his sister, and is supposed to have become a widow about two or three years ago, when she went to live with her brother and was baptised. While she lived with her brother she slept in the same room with him and his wife. The wife quarrelled with her sister-in-law, and having complained to the missionary, under whose care they were living, of his incestuous conduct, the missionary turned the prisoners out of the house of the mother-in-law of Modhoosooden where they lodged. The prisoners continued to live together, and without the wife of Modhoosooden, going from place to place; and Monee was at length delivered of a child, which was in her arms during the trial, and appeared about eight or nine months' old. It does not appear how the magistrate heard of the crime; but he wrote a proceeding and directed the police to investigate the case. The prisoners were found living together in one hut, having but one room, and containing one sleeping place. The wife of Modhoosooden expressed her willingness to give her evidence on the trial before I took her deposition, and it was accusatory of the prisoners. From the circumstances of the case, *viz.*, the prisoners having been accused by the wife of the man, and their having been turned out of their village, and having continued to live together in one hut by themselves, and the woman having borne a child while they lived together, I have no doubt of the guilt of the prisoners, and I convict them on violent presumption.

"It might perhaps have been better if I could have tried the case under Regulation VI. of 1832, but I have very great difficulty in getting a jury to sit with me, owing to their being no *vakeels* or *mooktears* attached to my court; and it is very seldom

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that any respectable natives enter it; and the prisoners did not claim the right. I can find no case disposed of by the Nizamut Adawlut which would be a precedent to go by in disposing of this case, and the only reported case of adultery in which a prisoner has been punished by that court is that of Bunshe Baooree, p. 317 of vol. II., in which instance the punishment was one year's imprisonment with labor. The crime of incest is more rare than that of adultery. It is more easy of detection, and less likely to cause a breach of the peace; but it is more difficult to guard against it. The crime of the prisoners is adultery in addition to incest. I think that three years' imprisonment would be a proper punishment for the prisoners, with a fine of fifty (50) rupees, or to labor until the fine be paid."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—"I concur with the sessions judge. The evidence is quite enough to establish a reasonable presumption that the man and woman have been living in incestuous adultery, and that the child is the fruit of that connexion.

"The witness Muddun distinctly states that during the time they lived in his house, they slept inside like man and wife, he himself sleeping in the verandah. He also states, that both of the prisoners spoke to him regarding the expediency of procuring abortion, when the woman got with child, being as they said apprehensive that if a child were born, the community would charge them with incest. Neither of the prisoners attempts to fix the paternity of the child upon any known individual. The man says he cannot say who got his sister with child, while she herself told three different stories. In the Mofussil she said a stranger had one day suddenly entered her house at Chetla, and had connexion with her. Before the magistrate, she said that she had one day been forced by a man, whom she did not know, when she was bathing in a tank at Chetla; and on the trial, she said that she had yielded to a stranger, who came to her one day at Tallygunge, while her brothers were absent. The male prisoner appears to me to be the more criminal of the two. He is a married man, and his wife was living with him, when the widowed sister came for shelter and subsistence to her brother's house. I sentence him to be imprisoned for three years with labor, the labor commutable to a fine of fifty (50) rupees. I sentence the woman to be imprisoned for two years, with labor suitable to her sex, the labor commutable to a fine of thirty (30) rupees. The fines in both cases payable in one month."

PRESENT:

J. DUNBAR, Esq., *Judge.*

SHEODIAL

versus

BUNARASEE (No. 8), BEHAREE (No. 9) AND MUSST. ROGHEE (No. 10).

1852.

January 16.

Case of BUNARASEE and others.

The Nizamut Adawlut confirmed the order passed by the sessions judge, on a conviction of accompliceship in burglary and theft, and receipt of stolen property.

CRIME CHARGED.—Nos. 8 and 9, burglary and theft of property valued at Company's rupees 301, and Nos. 9 and 10, having in their possession stolen property, knowing it to have been stolen.

CRIME ESTABLISHED.—Nos. 8 and 9, accomplices in burglary and theft of property valued at Company's rupees 301, and No. 10, having in her possession stolen property, knowing it to be such.

Committing Officer, Mr. R. H. Russell, joint magistrate of Chumparun, Sarun.

Tried before Mr. H. V. Hathorn, sessions judge of Sarun, on the 8th September 1851.

Remarks by the sessions judge.—"The prosecutor Sheodial, on hearing a noise inside his house, got up and observed the two lads Bunarasee and Beharee inside his apartment, Beharee being in the act of passing through the hole cut in the wall. He seized them both, and called for assistance, and Nurkoo and Bajoo came to his aid. The lads said there were others outside, who had taken the money. They were accordingly pursued, and Surdho (the son of Musst. Roghee, prisoner No. 10), and Sunker, are stated to have returned and opposed them with *lattees*, which caused them to give up the pursuit. Failing in the apprehension of Surdhoo, who was thus recognized as an accomplice, the mother Roghee was seized, and she confessed, stating that her son had gone out to steal, and that she had received six rupees, which she delivered up to the police. The witnesses cited by the prosecutor confirmed the apprehension of the two lads first named inside the house, and they further averred that they recognized Sunker and Surdhoo *by their voices*. The prisoners Bunarasee, (No. 8) and Beharee (No. 9), confessed at the thanna, implicating Surdhoo, Sunker Acharaj and others, as their accomplices. Beharee before the magistrate also admitted being an accomplice, naming those who had cut the hole, and those who had entered and brought out the money. Both Beharee and Bunarasee *denied* before this court, urging that they had been advised to confess by the village *ticcadar* and others, admitting, however, no previous enmity with the prosecutor to justify the probability of a false charge, and witnesses were cited by Beharee to prove

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Case of BUNARASEE and others.

that he had been apprehended the following day elsewhere. Musst. Roghee (No. 10), confessed both at the thanna and foujdaree, to the extent of receiving six rupees from her son, who had gone out with others to steal, but which she gave up to the police on being apprehended. At the sessions she alleged that she and her son were innocent, and that she had given six rupees *to the police*, to save her son from ill-treatment, which they threatened. Sunker was not apprehended on the spot, and pleaded an *alibi*. The apprehension of Bunarasee and Beharee inside the house, and their own confessions, left no doubt as to their participation, but it was evident that they were *lads employed by others*, who unfortunately have escaped, and the confession of Musst. Roghee to being an accessary after the fact, and receiving a part of the stolen property, (which appeared to have been voluntary) was declared sufficient for her conviction to that extent. The prisoner Sunker was acquitted in this case, as the witnesses did not swear to a positive recognition of his *face*, but only supposed it to have been him by the sound of his *voice*. Punishment was accordingly awarded to Nos. 8, 9 and 10, in proportion to their offences, and the prisoner Sunker was acquitted in accordance with the *futwa* of the law officer, in which finding I concurred."

Sentence passed by the lower court.—Nos. 8 and 9, each to one and half ($1\frac{1}{2}$) year's imprisonment, with labor in light irons inside the jail, with reference to their youth; and No. 10, one (1) year's imprisonment with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—"The prisoners in their petition of appeal, do not attempt to impugn the evidence; they merely state that they are dissatisfied with the judgment of the sessions judge. That judgment appears to me upon the record to be just and proper. The evidence leaves no doubt of the guilt of the prisoners. The sentence is confirmed."

PRESENT:

J. DUNBAR, Esq., *Judge.*

RAMBUKSH KOEREE

versus

BEHARY (No. 2) AND MOHUR (No. 3).

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Case of BEHARY and another.

The prisoners' confessions were proved to have been voluntary, and their guilt also confirmed by the production of the stolen property, of the knowing receipt of which they were convicted.

CRIME CHARGED.—No. 2, having rupees 400 in his possession, knowing the same to have been stolen, and No. 3, privity to the same, and receiving from prisoner Behary, rupees 390 of the stolen property, knowing the same to have been stolen.

CRIME ESTABLISHED.—No. 2, having in his possession rupees 400, knowing the same to have been stolen, and No. 3, privity to the same, and receiving rupees 390, from the prisoner Behary.

Committing Officer, Mr. J. F. Lynch, deputy magistrate (with magisterial powers,) of Sewan, Sarun.

Tried before Mr. H. V. Hathorn, sessions judge of Sarun, on the 22nd November 1851.

Remarks by the sessions judge.—"The prosecutor in this case, Rambuksh Koeree, an opium *bundishwur*, set forth that in Bysakh 1258 *Fuslee*, he received (on account of himself and others) from the opium *gomashta* rupees 498-12, and had 2-4 of his own for expenses, making a total of rupees 501; that he tied it up in a bundle and slept that night in a garden with the prisoner Behary and seven others, (whom he named), and in the morning had occasion to absent himself for a necessary purpose, when on his return the money was *gone!* He says he suspected Behary, as he lived near at hand, and who eventually *confessed*, promising to return the money. Time was apparently given for this purpose, but as the money was not restored, he, the prosecutor, in Bhadoon (four months afterwards) informed at the thanna. Behary was shortly afterwards apprehended, and rupees 380 out of 390 was found on one Mohur, who said he had received it from Behary. The remaining rupees 10 (it was alleged) was given by Mohur to the darogah."

Sentence passed by the lower court.—No. 2, four (4) years' imprisonment, and No. 3, one (1) year's imprisonment, each with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—"In his petition of appeal the prisoner Behary says that the money was his own, and that he purposely made it over to Mohur to keep. Mohur admits that he received the money, but

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denies all knowledge of its having been acquired by theft. I see no reason to doubt that the confessions were, as asserted by the witnesses, perfectly voluntary; and they are confirmed by the production of the stolen cash. The conviction is good, and I see no reason to interfere with the sentence of the sessions judge."

PRESENT:

J. DUNBAR, Esq., *Judge*.

TRIAL No. 2.

SHEIKH MUNDEE

versus

SHEIKH SHAKEER (No. 31), JAUN MAHOMED (No. 32), USHEEMUDDEEN (No. 33), SHEIKH GORAEE (No. 34) AND SHEIKH ARMAN (No. 35).

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Case of SHEIKH SHAKEER and others.

Consolidated sentences were passed upon the prisoners convicted in two separate cases of burglary.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor, and stealing therefrom property valued at Company's rupees 6-12-5; and 2nd count, keeping in their possession stolen property, knowing the same to have been stolen.

CRIME ESTABLISHED.—No. 31, burglary and theft in the house of Sheikh Mundee, and having in his possession the property stolen therefrom, knowing the same to have been stolen; and Nos. 32 to 35, having in their possession stolen property obtained by burglary in the house of Sheikh Mundee.

TRIAL No. 3.

RAM KISHEN MISTREE

versus

SHEIKH SHAKEER (No. 39), JAUN MAHOMED (No. 40), USHEEMUDDEEN (No. 41), SHEIKH GORAEE (No. 42), AND SHEIKH ARMAN (No. 43).

CRIME CHARGED.—1st count, burglary in the house of the prosecutor, and stealing therefrom property valued at Company's rupees 1-13-0; and 2nd count, keeping in their possession the stolen property, knowing the same to have been stolen.

CRIME ESTABLISHED.—No. 39, burglary and theft in the house of Ramkishen Mistree, and having in his possession the property stolen therefrom, knowing the same to have been stolen; and Nos. 40 to 43, having in their possession stolen property obtained by burglary in the house of Ramkishen Mistree.

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Case of SHEIKH SHAKEER and others.

Committing Officer, Mr. R. Abercrombie, magistrate of Dacca.

Tried before Mr. R. H. Mytton, commissioner, with powers of sessions judge, Dacca, on the 20th November 1851.

Remarks by the commissioner.—"A burkundauz of the Roopgunge thanna, being on duty in a village in the interior to the east of Dacca, had his suspicions aroused against two Mahomedans, who came singing Hindoo songs in praise of *Rama*. After some questioning, one of them, Haranoollah, admitted that they belonged to a party of thieves who had come from Furreedpore. Hearing this, and accompanied by two chowkeedars, he went to look for their boats. He found one of them, and on board of it, prisoners Shakeer, Arman and Jaun Mahomed. In the boat a lot of plunder was found. The other boat was seized on the other side the river in charge of prisoner Newaz, who is quite a boy. Newaz said that their plunder, in brass utensils, had been thrown into the river on the seizure of the other boat, and the rest carried off by Kalymooddeen and Sumeerooddeen. Shakeer informed the burkundauz that two of his party had gone into the villages, to examine houses, on pretence of begging. Some chowkeedars were sent to look for them, and were successful in catching prisoners Usheemuddeen and Goraee. From the admissions before the police and magistrate, it appears that two gangs of thieves in two boats had come from Furreedpore district, several days journey, Shakeer being the head and performing artist in one, and Kalymooddeen and Sumeerooddeen in the other; that they had robbed several houses, prosecutor's among the number, which Shakeer pointed out. Four or five houses were entered by this man in one night, and in the prosecutor's house, he took a *nuth* out of a woman's nose in her sleep. He has before been in jail for two years for cattle stealing, and one year for *budmashy*, and taken up in other cases, and is evidently a practised thief. His confessions of the deed are full and unreserved, both to the police and to the magistrate.

"The confessions to police and magistrate of Nos. 32, 33, 34 and 35, do not amount to an admission of the first charge; but, coupled with the finding of the property in their boat, warrant a conviction of the second.

"They are sentenced as shown in the statement, in concurrence with the *futwa* of the law officer."

Sentence passed by the lower court.—Sheikh Shakeer, seven* (7) years' imprisonment with labor in irons, and Jaun Mahomed, Usheemuddeen, Sheikh Goraee, and Sheikh Arman, three* (3) years' imprisonment, with labor and irons.

* These are consolidated sentences in trials Nos. 2 and 3, the prisoners concerned in those trials being the same.

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Case of Sheikh Shakeer and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar).—Trial No. 2.—"The conviction is good, and the court see no reason to interfere."

Trial No. 3.—"The conviction is good, and the court see no reason to interfere.

"The property found in the boats was identified as the property of the prosecutors in the above two cases, and the fact of a burglary having been committed in the house of Sheikh Nundee, on the 25th August, and in the house of Ramkisto on the 27th, is proved, both by direct evidence, and by the confessions of Sheikh Shakeer."

Present:

J. DUNBAR, Esq., *Judge.*

DHUN SINGH

versus

RADHAKRISTO GHOSE.

1852.

January 16.

Case of Radhakristo Ghose.

The prisoner's guilty receipt of the stolen property established by his contradictory statements as to how he got it.

Crime Charged.—1st count, dacoity in the house of the prosecutor, and plundering therefrom property valued at Company's rupees 229-8; and 2nd count, having in his possession part of the plundered property, knowing the same to have been obtained by robbery by open violence.

Crime Established.—Having a gun in his possession, knowing it to have been obtained by dacoity.

Committing Officer, Mr. J. R. Muspratt, officiating joint magistrate of Baraset, 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 19th November 1851.

Remarks by the additional sessions judge.—"The plaintiff, Dhun Singh, lives in Kawgatcheeghur in the thanna of Nyhattee, and on the night of the 28th of May last, a dacoity took place in his house, and among other things that were carried off by the dacoits was a gun. The prisoner lives in Sutimpore, two or three coss from the prosecutor, in the same thanna, and on the 28th of July last, his house was searched, on account of another dacoity in which he was suspected to have been concerned, and a gun was found in the house, which the police suspected might be the gun which had been carried off from Dhun Singh's house. When Dhun Singh saw the gun he recognized it; and there are three witnesses who state that it belonged to him. There was only one witness on the trial who could recognize the gun as having been found in the house of the prisoner, and that witness

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was an uncle of the informer, who was the original cause of the prisoner's house being searched. The witness also stated that the prisoner told the darogah who searched his house, that one Ramzan had pawned the gun to him. Moreover the prisoner acknowledged this before the magistrate, when he was accused of the other dacoity; but the prisoner adopted a different defence before the magistrate when accused in this case; he then said that the informer put the gun in his house. There was only the above-said witness to prove that the gun which was produced in court was the same gun which was found in the prisoner's house, a point which it was particularly necessary to establish, as the gun had passed through so many hands. I was, therefore, obliged to call more witnesses, to show that the gun which was produced in court was the same as the gun which was found in the prisoner's house, as well as witnesses to prove that the prisoner had acknowledged before the magistrate that he had received the gun from one Ramzan, which had been found in his house. In his defence the prisoner said that Ramzan had pawned a gun to him, but had received it back, and that this gun had been put into his house by the informer, Burro Mussulman. I convict him of having a gun in his possession, knowing it to have been obtained by dacoity. The evidence of his guilty knowledge consists in his own contradictory statements, neither of which can be proved."

Sentence passed by the lower court.—Five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—"The prisoner said in the Mofussil that Ramzan had pawned the gun to him. On coming before the magistrate he said that he had told the story of Ramzan's having pawned the gun, at the suggestion of Burro Mussulman, but that the truth was, that the said Burro had clandestinely placed the gun in his house. At the trial he accounts for the gun being found in his house, in the same way, adding that the same gun had a short time before been placed in pawn with him, by Ramzan, but withdrawn after six days. The witnesses summoned on his behalf can say nothing in his favor. Even if his statements had not been contradictory, it is evident that a gun is not an article to be clandestinely stowed away in a man's house by an enemy. I concur in the conviction, and see no cause to interfere with the sentence."

PRESENT:

A. DICK, Esq., *Judge.*

GOVERNMENT

versus

RUNGLALL SINGH (No. 2), UTCHRUJ SINGH (No. 3), RAMSURUN SINGH (No. 4), RAMTOWNKUL SINGH (No. 5), BAHROO AHEER (No. 6), BURMA SINGH (No. 7), JUDDOO SINGH (No. 8), ANAIGA SINGH (No. 9), MAHADEO SINGH (No. 10), JOOGOOL SINGH (No. 11), COMMITTED IN JULY; GOORPERSHAD SINGH (No. 1), OUTAR SINGH (No. 2) AND KOONJA SINGH (No. 3), COMMITTED IN SEPTEMBER 1851.

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Case of RUNGLALL SINGH and others.

When persons accused in a case, even of affray, have been virtually acquitted by the magistrate, the sessions judge is prohibited from interfering by Act XXXI. of 1841.

It is not necessary in every case of affray, to commit both sides.

The sessions judges should record, in a distinct proceeding, the appointment of assessors or jurors, and the Clause and Section under which they are to act, and insert in their decision that the assessors delivered their opinions separately, which were discussed, and then recorded at the request of the assessor or judge.

CRIME CHARGED.—Affray attended with assault and severely wounding Goorpershad Singh, Outar Singh, Rutun Singh and Koonja Singh, on one side, and slightly wounding Ramtownkul Singh, one of the defendants, on the other side.

CRIME ESTABLISHED.—Affray attended with severely wounding Goorpershad Singh, Outar Singh, Rutun Singh and Koonja Singh, on one side, and slightly wounding Ramtownkul Singh, one of the defendants, on the other side.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, officiating sessions judge of Shahabad, on the 13th September 1851.

Remarks by the officiating sessions judge.—"This case first came to trial on the 3rd September 1851.

"The charge was laid in the calendar 'charged with affray 'attended with assault and severely wounding Goorpershad 'Singh, Outar Singh, Rutun Singh, and Koonja Singh, on one 'side, and slightly wounding Ramtownkul Singh, one of the 'defendants, on the other side.'

"*The four men wounded* in the affray were not committed, but were sent up as witnesses.

"As this was contrary to the provisions of the Construction No. 535, the case was, after a reference to the sudder court, returned, and the error pointed out to the magistrate, who subsequently committed them in a supplementary calendar. The correspondence* on this point is annexed, and it will

* *From the Officiating Sessions Judge of Shahabad to the Register to the Court of Nizamut Adawlut, No. 260, dated 7th August 1851.*

"I have the honor to solicit the orders of the court on the following question, which is one of rather a peculiar character.

"A case of affray was yesterday brought before me for trial on a commitment by the magistrate, in which the four individuals, *who had been most severely wounded*, had been made witnesses against the rest.

be satisfactory to know whether I have pursued the proper course in obtaining the amendment of the commitment. 1852.

"The origin of the dispute is involved in some obscurity, one party affirming that it arose in consequence of prisoner No. 1, carrying off three bullocks, the other, that it was caused by a dispute regarding some water-melons belonging to prisoner No. 5. January 17 Case of RUNGLALL SINGH and others.

"The affray itself is clearly established, the cause is differently narrated by the *witnesses*, according to their connexion with either party.

"The defence of the prisoners is detailed below:

"*Prisoner No.* 2,—says, he was a spectator but not a participator. His witnesses remember nothing.

"*Prisoner No.* 3.—That he was two miles off, a fact which his witnesses state, but their evidence is unworthy of credit, they being able to give no reason for remembering the date or the day.

"*Prisoner No.* 4,—has made an elaborate effort at establishing an *alibi*, and involved three men in such gross and palpable perjury that they have been committed; one is a witness for the prosecution, who after having on the first day of trial distinctly named and pointed out in my presence this prisoner as present and participating in the affray, the next day, when his examination was resumed, on the question *being put by the prisoner's*

"The ground for this procedure is not recorded in the final *roobukaree* of commitment, but in a previous proceeding. I find that it is rested upon the fact that the other party have not named these men as those who struck them, and there was no proof to the actual perpetration of any act of violence on their part.

"On these grounds the magistrate after first taking their defence, as participants, subsequently, without passing any order of acquittal, administered an oath to them and admitted them as witnesses in the case.

"This case appears to me to be in direct opposition to Construction 535.

"Admitting this to be the case, however, I cannot discover any clear rule of procedure for my guidance. Section V., Regulation X. of 1824, gives special authority to the sessions judge, to order on certain grounds the commitment of witnesses to whom a tender of pardon has been made, and I should probably be acting in accordance with the spirit of that enactment were I to adopt this course.

"But the case does not fall strictly within the provisions of this law, and as other rules seem to render the propriety of the procedure questionable, and I am anxious to avoid the possibility of error, I have thought it advisable to postpone the case, and refer the point for the instructions of the court."

From the Register of the Nizamut Adawlut to the Officiating Sessions Judge of Shahabad, No. 839, *dated 5th August.*

"The court having had before them your letter, No. 260, of the 7th instant, direct me to inform you, that they are precluded by established rule from giving an opinion in this form on the point therein mooted, you will dispose of it according to your own judgment, and the court, should the case come before them in appeal, will then consider it under judicial safe-guards, and rule it by judicial order.

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vakeel deliberately stated that this prisoner was *not* present. He was warned and questioned, and given every opportunity of explaining this palpable contradiction, but all he could say was that if he had been asked about the prisoner by name he should have said he was not there. This excuse is absurd, the same would apply to all the prisoners, as he pointed them all out with his hand, one by one.

"The other witnesses, Nujeeb sepoys of the local guard, who depose to the prisoner having come to the guard-house at the jail and remained there on the day of the occurrence. Strongly suspecting, from the deportment of these witnesses, the utter falsehood of their story, I requested the magistrate to inquire when the men were on guard, and it appears, by the evidence of the jemadar and others, that one was *not on the jail at all on the dates* specified; *both* their depositions are thus proved to be false, as each man declared that the other was present.

"*Prisoner No* 6,—gives the evidence of three chowkeedars to prove that he stood by only at a little distance, and did not participate.

"I cannot *credit* this in opposition to the evidence for the prosecution; human nature too, especially as developed in Arrah, is against the plea. The man is one of the faction and of a most pugnacious demeanour, which I feel convinced would not admit of his standing close by without taking part in the affray.

"*Prisoner No.* 7.—This is a man of wealth and influence, and he has set up the best concocted *alibi* in the case, bringing forward an Arrah banker, a stamp seller and a *peada*, who depose to his coming into Arrah on the day of the affray to pay his rent (as *ticcadar* of an estate) to the above banker, under whom he is lessee.

"The witnesses had studied their parts well, but there were points of inconsistency and contradiction, which upon careful cross-examination betrayed the falsehood of their story. The man had undoubtedly come in, and the witnesses had seen him but it was evidently on *the next day*, and they had no compunction in altering the date. The witnesses of No. 8, remember nothing. Prisoner No. 9 gives several witnesses to prove that he was in Arrah at the house of one Hunkar Singh. These witnesses speak to the fact, but can give no good reason for remembering the day and the date, which is the *cream* of such a defence.

"Their testimony is full of contradictions, and the demeanour of the witnesses throws the greatest suspicion on the evidence. I reject it without hesitation.

"These witnesses were examined before the magistrate, and denied all knowledge of the prisoners' plea.

"*Prisoner No.* 10,—gives evidence to prove that he went to perform '*Devy poojah*' at Ghazeepore.

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"The story is unworthy of belief, being in itself highly improbable, but being desirous for my further satisfaction of ascertaining whether such a *poojah* takes place at that village on the date specified, the sentence of the prisoner is postponed, and the magistrate addressed on the subject. No. 6 gives no evidence admitting his presence; he is wounded. Nos. 2, 3, of the supplementary calendar give no witnesses, but refer to the evidence for the prosecution for their exculpation.

"The verdict of the jury pronounced the whole guilty of the charge."

Sentence passed by the lower court.—No. 4 to be imprisoned with labor and irons for six (6) years. Nos. 2, 3, 5, 6, 7, 8, 9, and 11, of the calendar for July, and Nos. 1, 2, and 3, for September 1851, each to be imprisoned without irons for four (4) years, from the 13th September 1851, and to pay a fine of one hundred (100) rupees on or before the 29th day of September 1851, or, in default of payment, to labor until the fine be paid or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present: MR. A. Dick.)—"There is no evidence against the three prisoners Goorpershad No. 1, Outar Singh No. 2, and Koonja Singh No. 3, of the supplemental calendar. This the magistrate declared in his proceeding of the 7th June 1851; and he then virtually, though not expressedly, acquitted them, by making them witnesses in the case, and striking them out of the number of the accused, *on that account*. Therefore, the sessions judge was in error in supposing that Construction 535 applied. There was no pardon, but, on the contrary, a distinct declaration that no criminal participation was proved against them. The magistrate was also wrong in committing them after having actually acquitted them. In such a case, the sessions judge is prohibited from interfering by Act XXXI. of 1841. There was no evidence that they had been criminally concerned in the affray; hence, though wounded, and severely, their testimony was perfectly admissible in the case, and indeed the best that could be available, since these persons deposed on oath on the very day that they were assaulted. It is not necessary in every case of affray, to commit *both* parties. See Construction 778. These three prisoners are therefore acquitted, and are to be released forthwith.

"The court, not satisfied with the evidence against the prisoners Runglall No 2, Utchruj Singh No. 3, and Ramsurun Singh No. 4, and Ramtownkul Singh No. 5 of the calendar, acquit them, and order their immediate release.

"The court see no reason for interference with the sentences passed against the prisoners Nos. 6, 7, 8, 9, and 11. The evidence against them being manifestly corroborated by the severity of the wounds of four persons, though from gross exaggerations

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requiring large deductions; whereas the story set up for them against the Narainpore party, is strongly falsified by the fact of one only person, Ramtownkul, being engaged on the side of Nusurutpore, against a host from Narainpore, and that one person escaping with a mere scratch, so slight as to induce the surgeon to express astonishment that a medical opinion on it should be called for! while four on the other side were severely wounded, of course by this said one man!

"An objection was urged to the legality of the trial in the sessions, on the ground that the opinions of the assessors had not been given *separately*, and discussed, as enjoined in the law, Clause 3, Section III., Regulation VI. of 1832.

"It is true that there is nothing on record to show that the opinions of the assessors were given separately, and discussed; nor why, or at whose desire, their opinions were put on record. The opinions are recorded as unanimous, and one and the same, and signed by all three of the assessors. The law does not require that the opinion of each assessor should be *recorded* separately, or indeed that any of them must be recorded in writing, unless particularly so desired by the assessor or the judge. Consequently, there is no defect in the proceedings sufficient to vitiate the trial.

"The court observe, however, for the future guidance of the judge, that a *roobukaree*, or written proceeding, should be filed in the record of the trial, appointing assessors or jurors, distinctly stating the clause of the law under which they are appointed, and are to take part in the trial, and in case of assessors, the record of the trial should contain a clear statement that the assessors gave their opinions separately, which were discussed, and then recorded at their desire, or that of the judge.

"Such precision, though not enjoined expressedly in the law, would tend far to obviate any cavil to the legality of the proceedings in a trial."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

RAMKOOMAR MOOKAPADEEAH

versus

KUSIMUDDEE MANDOLE (No. 1), MOOLOOKCHAND MOOCHEE (No. 2) AND MUDHOOSOODUN KAORAH (No. 4).

1852. January 20.

Case of KUSIMUDDEE MANDOLE and others.

The convictions and sentence passed by the sessions judge on the prisoners in a case of dacoity, affirmed by the Nizamut Adawlut.

CRIME CHARGED.—1st count, Nos. 1, 2 and 4, dacoity in the house of the prosecutor, on the night of the 5th August 1851, or 21st Sawun 1258, and plundering therefrom property valued at Company's rupees 171-3; and 2nd count, Nos. 2 and 4, having in their possession part of the plundered property, knowing the same to have been obtained by robbery by open violence.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. J. R. Muspratt, officiating joint magistrate of Baraset, 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 31st October 1851.

Remarks by the additional sessions judge.—"On the 5th of August, a dacoity took place at the house of the prosecutor in the village of Kuchoa, in the thanna of Busoorhath. After some days, an informer, witness No. 19, who is a peada attached to the thanna of Kudumgachea, told his darogah that he had heard some people talking of a dacoity; and his darogah sent him to the darogah of Kuchoa, who thus got trace of the dacoits. The prisoner No. 1, Kusimuddee, lives at Kujoordana, in the thanna of Kudumgachea, but only about two *coss* from the prosecutor. He was apprehended, according to the record, on the 12th of August. On that day he confessed before the police, and the next day before the joint magistrate. The prisoners Nos. 2 and 4 were apprehended (according to the record) on the 13th August, and they confessed before the police on the 14th, and before the joint magistrate on the 15th of August. They both stated that they accompanied the gang of dacoits, and each said that he got a portion of the spoil. I convict all these prisoners of dacoity on their own confessions. The confession of No. 4 was supported by some brass vessels, which were claimed by the prosecutor and recognized by his witnesses, having been found in the prisoner's pig-sty."

Sentence passed by the lower court.—Each, seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed, urging that their confessions were extracted from them by ill-treatment; but they named

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no witnesses to prove their plea; while the evidence to their confessions before the darogah and the joint magistrate having been freely and voluntarily made, is in every respect satisfactory. The confessions of the prisoners Moolook Chand and Mudhoosoodun are corroborated by the finding of a *chuddur* in the possession of the former, and some brass utensils in that of the latter, which they admitted they had obtained in the dacoity, and which have been identified as belonging to the prosecutor. I see, therefore, no reason to interfere with the convictions and sentences passed by the sessions judge.

"I remark, for the information of the sessions judge, that the prosecutor was not questioned with the necessary particularity regarding his identification of the stolen articles above-mentioned; and that the important variance in the statement of the witness No. 19 before the darogah, and his depositions before the magistrate and the sessions judge, which is such as to render his evidence unworthy of credit, has not been noticed."

PRESENT:

A. DICK, ESQ., *Judge*.

GOVERNMENT

versus

LALLOO DURZEE *alias* LAL MAHOMED.

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Case of LALLOO DURZEE *alias* LAL MAHOMED.

Prisoner acquitted, the evidence of his guilt being unsatisfactory.

Court express regret that facts of great importance in the case, and readily ascertainable, were not more fully investigated.

CRIME CHARGED.—Accomplice in a riot attended with assault, and wounding Ajoodheea Opadheea, one of the witnesses.

CRIME ESTABLISHED.—Accomplice in a riot attended with assault, and wounding Ajoodheea Opadheea, one of the witnesses.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, officiating sessions judge of Shahabad, on the 2nd August 1851.

Remarks by the officiating sessions judge.—"This case originated thirteen years ago, and was thus described by the sessions judge in the statement for August 1838:—

"'From the proceedings in this case, it appears that the prosecutor and the prisoner are both fond of athletic exercises, and 'that a spirit of rivalry existed between them on that score. 'On the 7th July a dispute occurred between them, the cause 'of which is not very clearly explained, when the prisoner and 'others who have absconded, attacked the prosecutor. The 'prisoner is proved to have wounded him with a sword on the 'head, arm and shoulder-blade. The wounds were not serious, 'as the prosecutor was sent to hospital and cured in fifteen days 'from the date of the occurrence; still, from their having been

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'inflicted with so deadly an instrument as a sword, the prisoner 'deserves exemplary punishment. From the number of persons 'engaged in the assault, it would perhaps have been more regular 'if the prisoner had been committed to take his trial for affray 'attended with wounding; and I have intimated this to the joint 'magistrate for his future guidance'.

"One of the witnesses who formerly deposed to the facts is dead. The magistrate has accordingly ordered the prosecution on the part of Government, and the wounded man, on whose prosecution the former trials were held, gives his deposition as a witness.

"He and the other witnesses swear positively to the identity and participation of the prisoner, stating that he was one of the rioters, and struck Ajoodheea Opadheea with a stick.

"The defence set up by the prisoner is, that he is not Lalloo Durzee, the son of Kadirbux, but Lal Mahomed, the son of Asai, *his brother*, Lalloo himself, being dead. Three witnesses appear to support this defence; but their evidence is very unsatisfactory, and quite insufficient to establish a plea, which is very easily advanced and not very easily refuted.

"The witnesses are all men of different caste and religion from the prisoner himself, the prisoner being a Mahomedan, they *Hulwaees* and a *Talee*. The first witness professing to know the families intimately, said, that he knew Lalloo very well; that he died five years ago, and was about eight or ten years old, and that the prisoner is twenty-five. Yet upon cross-examination he said that *Lalloo* (who by the above calculation would be about fourteen or fifteen) was older than the prisoner. Then both the witnesses being asked the number and names of the two brothers' sons disagree *in toto*, and make a complete confusion of families. In short, whether I look at the character of the witnesses brought to prove a fact, which, if true, would have admitted of much better evidence to the contradictions and inconsistencies contained in it, or to the extreme improbability of the defence, the plea is equally incredible.

"No proof whatever is offered to the plea of present enmity on the part of the prosecution arising from late occurrences.

"The *futwa* of the law officer convicts the prisoner of being an accomplice; and he is accordingly sentenced to four (4) years' imprisonment and a fine of fifty (50) rupees, to be paid in ten days, or labor in default."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) —"The witness Preeag, for the prosecution, declares that the prisoner was grown up when the affray occurred; the prisoner, however, is recorded to be but twenty-five years of age, and consequently could not have been more than eleven years of age at the time of the affray. This fact throws utter discredit

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on the evidence for the prosecution. The court, not satisfied with the evidence for the prosecution, acquit the prisoner and order his immediate release.

"The court regret that some respectable inhabitants of the village, in which the prisoner resided from his birth, had not been summoned to testify to the fact of the prisoner having remained at his home ever since the affray; and to his being the son of Asai, and not of Kadir; especially when prisoner's witnesses, who had deposed to both facts, were disbelieved. Both were facts capable of being indubitably established; and their truth or falsehood was of the very first importance in the case, with respect to the conviction or acquittal of the prisoner, and the perjury or not of the witnesses for the prosecution."

PRESENT:

A. DICK, ESQ., *Judge*.

RAMDOSS TAUTEE

verses

UMBICA CHURN MUNDUL.

1852. January 23. Case of UMBICA CHURN MUNDUL. Sentence passed on prisoner by the sessions judge mitigated, in consideration of his previous good character, and this being his first offence against the laws.

CRIME CHARGED.—1st count, dacoity, and 2nd count, knowingly having in his possession plundered property acquired by the above dacoity.

CRIME ESTABLISHED.—1st count, dacoity, and 2nd count, knowingly having in his possession plundered property acquired by the above dacoity.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J. H. Patton, sessions judge of East Burdwan, on the 24th June 1851.

Remarks by the sessions judge.—"The prisoner is charged with dacoity, and having in his possession property plundered in the said dacoity, and pleads 'not guilty' to both counts of the indictment. The substance of the evidence against him is as follows:—The prosecutor, Ramdoss Tautee, deposes that his sleep was broken by sounds of violence, and getting up, he saw people breaking down the mat-fence which forms part of the enclosure of his house with sticks and clubs; that he inquired who they were, and why they were so acting, and received a taunting and threatening reply; that he awoke his wife and made her escape by a lane hard by, and taking up an infant female child, about three years old, in his arms, fled in another direction, but was discovered by the assailants, followed and beaten with *lattees* to the effusion of blood, one of the party wrenching off a silver collar (*hunsli*) from the neck of his child; that the dacoits, about twelve or fourteen in number, then returned to his house and

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commenced the work of plunder, while he alarmed the neighbourhood; that the villagers collected, but that he became insensible at this time from the effects of the wound he had received, and saw nothing further. He adds that the police darogah arrived the following evening after sunset and took his deposition, and early the next morning searched the house of the prisoner, when, under the floor of an empty unfinished house without a thatch, were discovered a *lota* and *sari*, buried a foot in the ground, which he identified as his property. The first witness examined, Jaduchurn Chowkeedar, proves the fact of the dacoity, and the finding of the plundered property on the premises of the prisoner. This evidence is somewhat confused and contradictory, and I am not disposed to lay much stress on it. The four next witnesses, Unup Chowkeedar, Mohesh Chowkeedar, Sukha Chowkeedar and Abad Semanadar, besides attesting the fact of the dacoity and the finding of the property as above detailed, speak to the recognition of the prisoner and two others by torch-light at the time of perpetration, or rather immediately after it. This testimony, with a solitary exception, is strong to the maintenance of the fact of the prisoner's presence at the outrage. The exception I allude to, relates to the first deponent, who describes the prisoner as having a lighted torch in his hand, while the other three declare that he carried a thin stick. But Unup is evidently garrulous by nature and disposed to deal in hyperbole, and I had considerable difficulty in keeping him at all to the text of his evidence. The two witnesses that follow, Ramchurn Mittre and Bhugirut Dutt, prove the finding and identity of the property which ends the prosecution. The prisoner makes no defence, simply denying the charge and pleading an *alibi*. He rejects the evidence of the three first witnesses named by him, and those examined fail to prove his plea. The first gives him a good character; the second attempts to establish the *alibi*; the third mars the attempt by completely altering the features of the case; the fourth disclaims all knowledge of a transaction in which the third ascribes to him an active agency; the fifth speaks to his fair fame; and the sixth bears testimony to the respectability of his parentage. Doubtless there is some discrepancy in the evidence for the prosecution; but in the material points of recognition of the prisoner and finding of the property on his premises, I consider it conclusive. There is no motive ascribed to the prosecutor for accusing the prisoner and desiring to get him into trouble. Had the hiding of the property been the work of another, and its object the implication of the prisoner, a mere superficial upturning of the earth would have been sufficient for the purpose; but in the present instance, the ground is dug to the depth of more than a foot, and the things carefully deposited under it. The pri-

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soner, moreover, does not claim the property, and it is abundantly evident that he was not to be found when sought for, on the night of the occurrence, after its perpetration. The building in which the property was found is uninhabited, it is true, and in an unfinished state, but the process of digging and hiding could not have escaped the notice of the prisoner, as they must have been the work of time. Under all these circumstances, and taking into consideration the complete failure on the part of the prisoner to set up any defence whatever, I am of opinion that he is guilty of both couuts of the charge and sentence him accordingly."

Sentence passed by the lower court.—Fourteen (14) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick).—"It is in evidence that the prisoner was recognized at the dacoity by four persons, two of whom have deposed that they inquired at his house for him that very night, and he was not there. The finding of articles of the plunder in his premises has also been proved, though that is not conclusive, as the place being an unfinished, uninhabited house, where the articles were hid under ground, an enemy might have done it.

"The prisoner, however, is proved to have borne a good character previously, and this is his first offence. The court, therefore, mitigate the sentence to seven (7) years, with labor in irons."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

CHINTAMONEE MUNDUL MOOKTEAR.

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Case of CHINTAMONEE MUNDUL MOOKTEAR.

On a charge of forgery, the law officer acquitted, on the ground that no witness actually saw the forged signature affixed. His *futwa* overruled, and prisoner sentenced to three years' imprisonment, with labor without irons, in concurrence with the sessions judge.

CRIME CHARGED.—Forgery, in having fraudulently signed, or caused to be signed, the name of Ramtaruk Roy Mooktear, in a security bond for Bharut Chunder Luskur and others, defendants in a case (No. 325) under Regulation VII. of 1799, in which Sreenath Bose is plaintiff, and filing the above security bond with the above false signature in the court of the deputy collector of zillah 24-Pergunnahs.

Committing Officer, Mr. E. Jackson, officiating magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge, on the 31st December 1851.

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Case of CHINTAMONEE MUNDUL MOOKTEAR.

Remarks by the additional sessions judge.—"In a case under Regulation VII. of 1799 before the deputy collector, in which Ramnarain was one of the defendants, he, on the 29th of July, appointed this prisoner, Chintamonee, his *mooktear* jointly with Pittumber Ghuttuck, and on the same day Chintamonee filed in the court a security bond, signed with the names of Ramtaruk Roy, Pittumber Ghuttuck and Chintamonee's own name. Pittumber states that he signed it because he saw Ramtaruk's name on it; but having heard from Ramtaruk that he had not signed it, he wished to get off, and on the 1st of August he presented to the deputy collector a petition, expressing a hope to be able to relinquish his responsibility. Ramtaruk stated before me that he had agreed to sign the bond for rupees 4, but he did not sign it, nor get the money. Pittumber stated that he received rupees 4, and signed the bond; but when he presented the *ikranama* he never paid back the money which he had received. Witnesses for the defence state that Pittumber asked the prisoner to sign the bond, and that Chintamonee and Pittumber together filed the security bond in the collector's court; but the witness who received it in the court states, that Chintamonee filed it. Ramtaruk Roy denied that he signed the bond, but two witnesses for the defence stated that they saw him sign it in the absence of the prisoner and Pittumber. It is, however, highly improbable, that he being himself a *mooktear*, practising in the court of the deputy collector, should have signed a security bond for the client of other *mookteurs* in their absence. The following argument may be used for the defence: Ramtaruk stated that his security bond would have been accepted for rupees 200, which was the amount of this bond, and he had agreed to sign for rupees 4, what advantage then would there have been in forging his name, and paying another man rupees 4 to sign the bond? I cannot answer the question; but it may be that Pittumber signed as *mooktear* and received the rupees 4 in that capacity as well as for signing the bond, and that he would not have signed as he stated without seeing the name of Ramtaruk, who is a man of property, on the bond.

"The deputy collector and another witness stated that when the prisoner was first called upon to answer to the charge, he acknowledged that he did sign the name of Ramtaruk, but when it was immediately proposed to write his deposition, he denied that he had done so. The officiating magistrate stated in the calendar, that the only fraudulent intent which can be attributed to the prisoner consists in his having retained for himself the rupees 4, which Ramtaruk required for signing the bond, but if he would forge another man's name for rupees 4, he would be more likely to do so for a large sum; and as *mooktear*, there must necessarily be more confidence placed in

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him than there would be in a stranger. Under all these circumstances, I cannot propose a less period of imprisonment than three (3) years."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The law officer has acquitted the prisoner of the crime laid to his charge, on the ground that no witness saw him actually write Ramtaruk's name, and that the verbal admission by the prisoner to the deputy collector does not amount to legal proof in Mahomedan law.

"Ramtaruk has deposed that the signature is not his; and I find ample confirmation of the truth of this statement, in comparing his signature on the security bond with that to his deposition before the magistrate. The mohurir of the deputy collector's office has deposed that the security bond in question was filed by the prisoner, and the deputy collector and his naib nazir, that the prisoner himself admitted affixing Ramtaruk's signature. I, therefore, consider the crime charged to be proved, and concurring with the sessions judge, sentence the prisoner to imprisonment, with labor, but without irons, for three (3) years.

"I observe that, in recording the evidence of the witnesses, the sessions judge's mohurirs have made use of the word *huluf* as the translation of affirmation. This is incorrect. *Huluf* means an oath, and it was expressly to obviate the antipathy of respectable natives to appear in our courts as witnesses, on account of the necessity of submitting to *huluf*, that Act V. of 1840, doing away with oaths, was enacted. The sessions judge will be requested to be careful that his officers do not apply the word *huluf* in writing or speaking in his court as the translation of affirmation; *protigya* is the Bengallee term prescribed in the Act and in Circular Order No. 44, April 3, 1840."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

MADHUB MIRDAH.

1852. January 23.

Case of MADHUB MIRDAH.

The *futwa*, acquitting a prisoner of perjury on doubts of his having given one of the conflicting depositions, set aside in concurrence with the sessions judge, on positive proof that it was given.

CRIME CHARGED.—Perjury, in having on the 7th August 1851, deposed, on a solemn declaration, taken instead of an oath, before the deputy collector of zillah 24-Pergunnahs, that he had not seen Ramtaruk Roy, *mooktear*, sign his name in the security bond filed by Chintamonee Mundul, defendant, and in having, on the 6th September 1851, corresponding with the 22nd Bhadoon 1258, deposed, under solemn declaration taken instead of an oath, before the officiating magistrate of the 24-Pergunnahs, that he saw Ramtaruk Roy sign the security bond above alluded to, such statements being contradictory of each other on a point material to the issue of the case.

Committing Officer, Mr. E. Jackson, officiating magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 30th December 1851.

Remarks by the additional sessions judge.—"The charge fully explains the particulars of the case. There were only two witnesses for the prosecution entered in the calendar, *viz.*, the writers of the two depositions, but I called up what other persons could be found, who could give information respecting the manner in which the depositions were taken. The evidence of the deputy collector shows that a man gave the evidence before him; and the writer of it remembers the prisoner giving his evidence. It appears that when his name was first mentioned before the deputy collector as a witness, the prisoner was in the court and would have held back and avoided giving his evidence at that time, but being obliged to be a witness, he endeavoured to avoid giving direct answers, and at length, when he could no longer prevaricate, the deputy collector ordered his deposition to be taken on a fresh paper, and he stated that he did not see Ramtaruk sign the security bond which was before the court. When after a month he gave his evidence before the officiating magistrate, he stated that Ramtaruk did sign the paper. This is shown by the evidence of the mohurir who wrote the evidence, and is not disputed by the prisoner. It is to be observed that before the deputy collector the man's mark only was put on the paper, although before the officiating magistrate he signed his own name; but as he had answered the questions which were then put to him with much unwillingness, it is not surprising that he only

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put his mark on the paper. In his defence he shows that he is not inexperienced in giving evidence, and he considered the reservation of his own signature would be of advantage to him. The defence is that he did not give the evidence before the deputy collector which is imputed to him; that what he stated was destroyed; and that what is now produced is not his deposition, and is not signed by him, although he had previously signed papers in other trials.

"It is to be regretted that the deputy collector did not file the whole of the man's deposition with the record; but I have no doubt whatever that he made the deposition which is imputed to him; and as it is quite contrary to what he said before the officiating magistrate, I find him guilty of perjury, and if the law officer had also found him guilty, I should have sentenced him to three (3) years' imprisonment, with labor."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The law officer's reason for acquitting the prisoner is, that he doubts the fact of his having given a deposition to the deputy collector to the effect that he did not see Ramtaruk sign the security bond. This fact, however, is proved by the deputy collector, Mr. Mackillop, and the writer of the deposition. In concurrence, therefore, with the sessions judge, I sentence the prisoner to imprisonment for three (3) years with labor."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

HURU CHURN PAL AND NUFFER GHOSE

versus

1852. January 23. Case of UCHUL NAIK and others. Charge of dacoity. Prisoners pleaded that their offence does not amount to that offence; but their plea over-ruled on the evidence.

UCHUL NAIK (No. 2), DUMMODOSS BYSTUM (No. 3), BURRA NUFFER NAIK (No. 4), SIBOO NAIK (No. 5), GOPAL NAIK (No. 6), PURAN NAIK (No. 7), UDITH NAIK (No. 8), KOOSUL MANJEE (No. 9), RAMTUNOO NAIK (No. 10), PURIKHIT NAIK GHUTWAL (No. 11), BHURUTH NAIK (No. 12), CHOTA NUFFER NAIK (No. 13), NIMYE NAIK (No. 14), URJOON NAIK (No. 15) AND BHIM NAIK (No. 16).

CRIME CHARGED.—Dacoity in the house of each of the prosecutors, in which dacoities, the prosecutor Nuffer and his brothers, Godie and Seetaram, were slightly wounded by them, and property to the value of rupees 17-3, belonging to Huru Pal, and property to the value of rupees 7-12, belonging to Nuffer, were plundered by them on the night of the 10th October 1851, corresponding with the 25th Assin 1258 B. S.

CRIME ESTABLISHED.—Dacoity.

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Case of UCHUL NAIK and others.

Committing Officer, Mr. C. H. Campbell, officiating joint magistrate of West Burdwan.

Tried before Mr. C. Garstin, sessions judge of West Burdwan, on the 25th November 1851.

Remarks by the sessions judge.—"All the prisoners tried in this case deny being guilty of the dacoity charged against them, but admit having gone in a body in the evening (they allowed, however, when first taken, that it was at night,) to steal rice, when they say they were set upon by the prosecutor and others and beaten. The evidence for the prosecution, however, goes much further than this, and shows that a dacoity was actually committed, and that the dacoits, (prisoners,) had a fight with sticks with the prosecutors, in which the prisoners, Uchul No. 2, Ramtunoo No. 10, and Purikhit No. 11, were wounded, and the first-named of them taken; whilst on the other side also two or three men were slightly hurt. On the trial all the prisoners repeat the same story, and declare that they did not go near the houses at all, and were set upon and beaten in the fields, when Uchul No. 2, being captured, mentioned the names of all who had been with him, and thus caused their apprehension. They call five witnesses to prove that the fight had taken place in the fields, but four out of the five speak rather in favor of the story told by the prosecutors, and there is, I think, no question of their guilt. The jury are unanimous for a conviction; and seeing no cause to dissent with them, I have, in concurrence with their verdict, sentenced them all as noted below."

Sentence passed by the lower court.—Nos. 2, 10 and 11, each seven (7) years' imprisonment with labor in irons, and Nos. 3 to 9 and 12 to 16 each, five (5) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoners prefer an appeal to this court on the same ground as they rested their defence, *viz.*, that their offence was going forth to commit theft and not dacoity. The latter crime, however, appears to have been proved. Moreover, it may be observed, that had the prisoners gone forth in so large a body only with the object of stealing paddy, and wounded the persons who resisted them as they did in this case, a sentence of seven (7) years' and five (5) years' imprisonment would not have been too severe a sentence. The appeal is dimissed."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

JEEBUN (No. 2) AND MEEAH (No. 3).

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Case of JEEBUN and another.

The sentence, passed upon the prisoners in a case of culpable homicide, was reduced by the Nizamut Adawlut, on the ground that the circumstances of the case do not warrant the belief, that the assault was premeditated.

CRIME CHARGED.—No. 2, wilful murder of Ameer Khan, son of Mahomed Shah, and No. 3, culpable homicide of Ameer Khan, son of Mahomed Shah.

Committing Officer, Mr. E. F. Lautour, magistrate of Chittagong.

Tried before Mr. S. Bowring, additional sessions judge of Chittagong, on the 16th December 1851.

Remarks by the additional sessions judge.—"It appeared from the evidence of Hyder Alee (witness No. 1) that he was awakened in the night, by the prisoners, who told him that the deceased, Ameer Khan, had turned his cattle into their fields, and that they were taking him, Ameer Khan, to the Muhaldar, Casim. The witness then heard sounds of beating, and going out, found Ameer Khan, the deceased, lying on the ground groaning. The deceased went home, and died three days afterwards. The night was dark, but witness recognized the prisoners by their voices at first, and saw Jeebun strike deceased one blow on the thigh. The witness spoke likewise to former quarrels between the prisoners and the deceased.

"The witness Ronoo, (No. 2,) heard Ameer Khan call out that his cattle had been taken away and himself beaten, and immediately afterwards the prisoners called for Asmut Alee, and said the deceased had destroyed their crops, and they were taking him to the Muhaldar. In other respects the deposition of this witness agreed with that of Hyder Alee (No. 1) but he spoke with some hesitation as to the distance from which he heard the beating, and as to time.

"Casim Alee, the Muhaldar (No. 3,) corroborated the above testimony.

"The witnesses, Munnoo (No. 6), Asmut Alee (No. 7), Abdool Alee (No. 8), Samud Alee (No. 9) and Motee (No. 11), heard the deceased complaining that his cattle had been taken away. He accused the prisoners and several others of the act, but it does not appear that either the prisoners or any other of those he charged, were present at the time. It appeared also, from the testimony of these persons, that there had been many quarrels between prisoners and the deceased, and also that the clubs produced in court had been found in a tank close to the

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prisoners' house, and that the prisoners said Ameer Khan, deceased, had beaten them.

"Dr. Chevers deposed to the cause of death, a fracture of the skull, the effect of a blow of such a club as either of those produced in court. The civil surgeon likewise stated that there were many scratches on the body, as if it had been dragged along the ground, and though he had noticed no other wounds there might have been such on the corpse.

"The prisoners merely denied their guilt, and produced witnesses who spoke to no material point.

"The law officer, who sat with me on the trial, declared the crime laid in the calendar not proved.

"I dissent from this verdict. From the evidence of the witnesses, Nos. 6 and others, it appears that the deceased was decoyed from his house by his cattle having been driven away, or at the least that they had strayed, and he had gone in search of them. He re-appeared, according to the witness Samud Alee, (No. 9,) in the village half an hour afterwards, in company with the two prisoners, who were distinctly recognized by many witnesses acquainted with them; a sound of beating was heard, and though the prisoners said they had been struck by deceased, there is not the slightest evidence that such was the case, while it is distinctly stated that the prisoner Jeebun, (No. 2) inflicted one blow with a club, and that both defendants had with them such weapons as those produced in court. From the time he left his house to the time he was found on the ground groaning, it does not appear that the deceased was in company with any one but the prisoners, who must be cognizant of the mode of his death, and have at least been present at the assault. It is in favor of the prisoner Jeebun that he is an old man, about fifty-five apparently, and could hardly have inflicted a severe blow, but Meeah is young and strong. No enmity between the deceased and any other persons than the prisoners has been deposed to; as robbery was not the object, none but those could have an interest in his death.

"I do not consider the charge of murder proved. The probability is that severe maltreatment alone was intended, to deter the deceased from further prosecution of his suit against the prisoners; and I would convict them of aggravated culpable homicide, and sentence them to ten (10) years' imprisonment each, with labor and in irons.

"The magistrate having acquitted the chowkeedar, Gol Mahomed, might perhaps have strengthened the case by making him a witness, as he might have proved the steps taken by the prisoners to conceal the cause of the deceased's death.

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Case of JEEBUN and another.

"I regret to observe that in this case an attempt to misrepresent the circumstances of deceased's death by sending in slight sticks, in the first instance, was made by the village police. Since the middle of August last, no fewer than four attempts to conceal murder or manslaughter have been made. In the first case, that of Casheenath Deo, the Sudder Court acquitted the prisoner. That the deceased had been foully murdered by some one, there could be no doubt; but the police, by endeavouring to suppress evidence, had caused the witnesses so to contradict themselves that the court refused to convict. The second case, that of Ghyboollah, is now before the court. The heads of the village attempted here to conceal the facts attending the death of Dhya Bebee. On the 3rd instant, I acquitted Suffer Alee of homicide, in consequence of contradictions in the evidence, the witnesses being apparently desirous of securing the acquittal of the prisoner. In the trial now reported, the village chowkeedar endeavoured to misrepresent the case. It will require great attention and vigilance on the part of the magistrate to overcome the obstructions to justice offered apparently by all classes in this district; and I shall assist him, as far as may be in my power, by enhancing the punishment of offenders in every instance when an attempt to screen them, by suppressing evidence, has been made: as such attempts must have been made at the instigation of the criminals themselves, and if it can be done without risk, will probably be preferred to any legal defence that might be set up."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"There is no proof that the prisoners took the cows of the deceased from the cow-house at night, tethered them near their own fields, and then called Ameer Khan and accused him of destroying their crops. It is only in evidence that the deceased charged the prisoners with taking his cows, and the prisoners accused the deceased of destroying their crops; that the three had clubs in their hands, and proceeded together to the house of the witness Casim, who is the head man of the village, to settle the matter. There the sounds of blows were heard, and the deceased was found lying on the ground. Two witnesses depose to seeing the prisoner Jeebun strike deceased one blow on the thigh; and one witness speaks, though in a vague way, to both prisoners beating him while he was on the ground. What was the immediate cause of the assault, and who was the aggressor, is not known, as no one saw the commencement. The prisoners accused the deceased of assaulting them, but of this there is no proof, nor had they any visible injury. Mutual recriminations, incited by previous enmity, in all probability, led to the attack on the deceased.

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Case of JEBBUN and another.

"The conviction is good, but as the circumstances of the case do not warrant the belief that the assault was premeditated, and as it may have very possibly arisen from provocation, I am of opinion that the prisoners should have the benefit of the doubt; and therefore, I reduce the sentence proposed by the additional sessions judge to be passed upon the prisoners to imprisonment for four (4) years with labor, commutable to a fine of fifty (50) rupees each."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

ASHRUFF ALEE.

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Case of ASHRUFF ALEE.

Case of wounding with intent to murder. Sentence, transportation for life.

CRIME CHARGED.—Wounding his wife, Nissa Bebee, with a *dáo*, with the intention of murdering the said Nissa Bebee.

Committing Officer, Mr. E. F. Lautour, magistrate of Chittagong.

Tried before Mr. S. Bowring, additional sessions judge of Chittagong, on the 23rd December 1851.

Remarks by the additional sessions judge.—"Nissa Bebee, (witness No. 1,) deposed, that she is the wife of the prisoner, and had left his house to visit her father, who lives in the immediate neighbourhood. She overstayed the time she was to have been absent from home, and going in the morning to bathe and wash her clothes at a tank, she was attacked by her husband, deprived of her ornaments, dragged towards a mosque, and wounded with a *dáo*. The witness stated that she had no previous quarrel with her husband, and that he had no cause for his ill-treatment of her. In some slight particulars this deposition differed from what the witness had said in the *foujdaree*.

"The witnesses, Mohsun Alee (No. 2), Munsur Alee (No. 3), Suffer Alee (No. 4) and Samud Alee (No. 5), heard the alarm, and the prisoner say he would kill his wife (*amee katibo.*) They generally corroborated the testimony of Nissa Bebee, No. 1.

"Muddun, (witness No. 13,) and Fuzzur Alee (No. 14), as also the witnesses to the *sooruthal* (Nos. 6 and 7) spoke to having seen the woman, when wounded, lying on the ground, and to the apprehension of the prisoner.

"Sauchee (No. 15), a *mutuber* of the village, received charge of the prisoner on his apprehension, and also the *dáo* recognized as the property of the prisoner and found on him, as well as the ornaments of which he had stripped his wife. Nearly all the witnesses depose to the good character of Nissa Bebee.

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"Dr. Chevers deposed to the nature of the injuries received by the woman, and described them as most severe, and that such wounds could only have been inflicted with an intent to murder.

"The prisoner confessed at the thanna and before the magistrate. In this court he denied his guilt; but throughout charged his wife with adultery with Mohsun Alee, the *khansamah* of the zemindar. He said this was well known, but that owing to the influence of the zemindar, the witnesses would not depose to the fact. That he had forgiven his wife once on a promise of amendment. The confessions and the prisoner's statement in court differed in some particulars. He gave as witnesses Nos. 4 and 14; but they stated nothing in his favor.

"The jury found the prisoner guilty.

"The prisoner has not shown that he had any cause for jealousy, and the circumstance that after the trial, his wife, whom he had so ill-treated, interceded in his favor, indicates that he had none. The whole evidence shows that on a probably fancied provocation, he, with premeditation, determined to murder his wife, which he very nearly effected. The prisoner seems rather dull of intellect, and gave the names of the witnesses Nos. 4 and 14, because, he said, they had apprehended him; but I can see no reason for any mitigation of punishment in his case, and would recommend that he be transported for life with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"From the assistant surgeon's evidence, the wounds appear to have been very severe. The prisoner had admitted his intention to murder his wife on account of an alleged intrigue with another. The fact of this intrigue existing is not proved, and prisoner's own father has deposed that his daughter-in-law was chaste, and that her only reason for not returning from her father's, at the expiration of the time for which she obtained leave of absence, was her suffering under a female's usual monthly affection. I concur with the finding of the sessions judge, and in the sentence recommended by him, *viz.*, imprisonment, in transportation, for life."

PRESENT:

A. DICK, ESQ., *Judge.*

JEETNARAIN GHOSAUL

versus

CHINTAMONEE HAREE.

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Case of CHINTAMONEE HAREE.

Sentence of ten years' imprisonment, passed on prisoner by the sessions judge, mitigated to five years, in consideration of previous good character, and first conviction or apprehension for crime. Examination of witnesses to confessions, at the trial, should be close, full and complete, so as to satisfy the courts that they were perfectly voluntary, spoken at the time by the party confessing, and accurately recorded as spoken.

CRIME CHARGED.—Dacoity in the house of the prosecutor and plundering therefrom a sacrificial knife (বগী) valued at rupees 3.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. C. S. Belli, joint magistrate of Serampore.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 4th February 1851.

Remarks by the additional sessions judge.—"On the 22nd August 1849, a dacoity took place in the house of Jeetnarain Ghosaul in the village of Tantobatee, in the thanna of Rajbulhat, about half a mile from the *pharee* of Mayepore, and seven miles from the thanna.

"Several of the dacoits were wounded, of whom one was apprehended owing to his wounds; he confessed and was punished. This man's name was not taken in the confession, but he had absconded from his home, which is only one or two coss distant from the plaintiff's, and much search was made for him at the time; he at length was apprehended near Calcutta and he confessed both before the police and the magistrate of the 24-Pergunnahs; he has also marks of wounds on his person, which wounds he received in the dacoity."

Resolution of the Presidency court of Nizamut Adawlut, No. 477, dated 29th May 1851.—(Present: Mr. A. Dick.)—"The court having perused the above papers connected with the trial of Chintamonee Haree, observe that as there was not a tittle of evidence against the prisoner, except his alleged confessions, and he was apprehended without any apparent cause of suspicion, merely on the statement of a *goindah*, before passing a sentence of ten (10) years' imprisonment, it would have been fit and satisfactory to have required evidence to the alleged flight of the prisoner from his house immediately after the dacoity and the cause of it, and of his being wounded or not; also to his character and livelihood. An inquiry should have been made at the village where he resided when apprehended, as to when he came, whether wounded or not, and what reason he assigned for coming, and how he lived? The court direct that evidence be taken as above indicated; and it be ascertained whether the prisoner can write or not."

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With reference to the above Resolution, the sessions judge submitted the following report, No. 224, dated 21st October 1851.—"I now submit the result of my inquiries on the particular points indicated in Mr. Dick's Resolution, bearing date the 29th May last. I annex also copies of the correspondence,* as per margin, relating to the case of the prisoner.

* Assistant magistrate's letter to the judge, No. 121, dated 22nd August 1851, with enclosure.
Judge's letter to the joint magistrate, No. 166, dated 6th September 1851.
Joint magistrate's reply, No. 243, dated 21st October 1851.

From the Assistant Magistrate of Hooghly to the Sessions Judge of Hooghly, No. 121, *dated the 22nd August,* 1851.

"I have the honor to acknowledge the receipt of your letter, No. 146, of the 14th instant, with its enclosure, and in reply to forward to you the accompanying copies of two letters from the joint magistrate of Serampore, number and date as per margin, for your consideration. The original report of the darogah will be forwarded to you hereafter.

No. 152, dated 28th July 1851.
No. 157, dated 1st August 1851.

"You will perceive, by the above-mentioned letters, that it will probably be impossible to carry out the order of the Nizamut Adawlut in this case."

From the Joint Magistrate of Serampore to the Magistrate of Hooghly, No. 152, *dated the 28th July* 1851.

"I have the honor to acknowledge the receipt of your letter, No. 453, dated the 25th instant, with its enclosure, from the additional sessions judge regarding the case of Chintamonee Haree.

"I beg to state that, on the receipt of the Resolution of the Nizamut Adawlut, No. 477, dated 29th May, I issued a perwannah to the darogah of thanna Rajbulhat to make the inquiries therein specified. In his reply to this perwannah, the darogah states that he had gone to Chintamonee's original place of abode in the Dewangunge thanna, and had ascertained what he could from the hearsay evidence of the inhabitants regarding Chintamonee's previous habits and character, and his departure from the village; but that he was unable to report upon his capture and the circumstances connected with it, as he did not know where it had occurred.

"On receipt of this reply, I wrote to the sessions judge to obtain the *nuthee* of the case, and on that officer informing me that it had been sent to you, I sent a *roobukaree* to you, on the 19th instant, requesting that it might be forwarded to me, but no answer has yet been received.

"I now beg to forward the Rajbulhat darogah's report in original, and shall be much obliged if, from your knowledge of the case, you will be so good as to supply the additional sessions judge with the information required concerning Chintamonee's capture."

From the Joint Magistrate to the Magistrate of Hooghly, No. 157, *dated 1st August* 1851.

"I have the honor to request you to forward copy of my letter, No. 152, dated 28th ultimo, to the additional sessions judge, with the darogah's report that accompanied it.

"From the evidence of two respectable persons living in Tata Sali, the former place of abode of the prisoner, it would appear that he quitted the village about a year, or a year and a half before the dacoity in Jeetnarain Ghosaul's house took place; that he left on account of the failure of his crops, and 1852. January 23. Case of CHINTAMONEE HAREE.

"I also returned the *nuthee* of the case, for if, as was most probable, Chintamonee came from Calcutta to commit the dacoity, and was caught out of the limits of this district, it is impossible to carry out the inquiry directed by the Sudder Nizamut Adawlut."

From the Officiating Sessions Judge to the Officiating Magistrate of Hooghly, No. 166, dated the 6th September 1851.

"With reference to your letters to the magistrate relating to the case of Chintamonee Haree, copies of which were forwarded to me by Mr. Chapman, it seems to me that you have not taken the requisite steps to carry out the injunctions of the Nizamut. You, perhaps, think that it would be better that final orders were passed as the case stands than make an investigation, difficult to conduct, which would, in all probability, lead to nothing. But the court's orders must not be treated in this way, and I must, therefore, beg that you will take the proper steps to carry out those orders, nor does it seem to me that there can be any difficulty in doing so. There are, in all, nine points on which information is required, 1*st*, evidence to the alleged flight of the prisoner from his house immediately after the dacoity, and the cause of it; 2*nd*, whether he was wounded or not; 3*rd*, what do his neighbours say of his character and mode of livelihood. These inquiries are to be made in the village where Chintamonee Haree formerly resided, and it is further necessary to inquire in the village where he resided when he was apprehended; 1*st*, when he came there; 2*nd*, whether he came wounded or not; 3*rd*, what reason he assigned for coming; 4*th*, how he lived. The prisoner must also be called up before you to ascertain if he can write or not.

"You will be so good as to take the requisite steps to obtain the above information, and submit the result to me for communication to the superior court. Such points as you find it impossible to obtain information upon, you will be so good as to explain distinctly what impediment exists to prevent the execution of the orders of the court.

"I return you for this purpose the native papers of the case which reached me from the additional sessions judge's office this morning."

From the Joint Magistrate to the Sessions Judge of Hooghly, No. 243, dated 21st October 1851.

"I have the honor to acknowledge the receipt of your letter, No. 166, dated the 6th ultimo, and to submit the result of such inquiry as I have been able to make, in conformity with the orders of the Sudder Nizamut Adawlut in the case of Chintamonee Haree.

"I beg, however, to request you to remove from your mind the idea that I have intentionally neglected to carry out the orders originally conveyed to me in this case. The examination of the witnesses was to have been conducted by Mr. Bentall, according to his letter, No. 22, of the 5th June, and for this purpose the witnesses were bound down to appear before him when called for; but owing to the transfer of the original *nuthee* from one office to another, the case was not brought before Mr. Bentall, and I was not aware that anything further was expected from me until the receipt of your letter now under reply.

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that he was considered a proper character while he was chowkeedar of the village. They further depose that up to the time of his leaving Tata Sali, he had no mark of a wound such as his left arm now bears, and that from the time he first came to the village, when he was quite a boy, they never heard of his having fallen from a *tál* tree, or experiencing any accident such as he himself describes.

"From the above it would appear, therefore, that the prisoner left Tata Sali prior and not posterior to the dacoity.

"Two witnesses have been examined in regard to the points relating to the prisoner, after he arrived at Balia Ghatta in the 24-Pergunnahs, at which place he was apprehended. From their evidence, it appears that the prisoner came about five or seven months before his apprehension to their village, calling himself Nobeen; that he was accompanied by a woman named Jeetoo Harinee; that they lived together in a house hired from one of the witnesses (Sudamonee Bewah) and that he

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"It appears that the original dacoity took place in Jeetnarain Ghosaul's house at Tautsali, in thanna Rajbulhat, on the 22nd August 1849, and that the accused, Chintamonee, was not arrested until the 19th December 1850, at a place named Balia Ghatta, in thanna Manicktollah, in the 24-Pergunnahs.

"I have now examined two witnesses from Shaibona, in thanna Dewangunge, from which village the accused originally came. These witnesses, Golam Hosein and Golam Kadir, are said to be chief men in the village. They allege that the accused left his village immediately after the dacoity, but they do not know why, nor whether he was wounded or otherwise. Their ignorance on this point is natural, as the accused would of course have concealed both his wound and his flight from the village. These witnesses further state that the accused had been the village chowkeedar for several years, in succession to his deceased uncle, but that, in the year previous to the commission of the dacoity, his land had been thrown out of cultivation by the drought, and that he had become a vagabond. They also state that he could not read or write.

"The witnesses from Balia Ghatta, in the 24-Pergunnahs, where the prisoner was arrested are named Petamber Kyal and Sudhamoni Bewa. He lived in the house of the latter, and they both state that he came to her with a woman named Jeetoo Harinee, about the time of the dacoity, with a wound on his left arm. He appears to have given no reason for his coming, and afterwards to have obtained his livelihood by working as a cooly up to the time of his arrest.

"I would beg to draw your attention to the deposition of the woman, Jeetoo Harinee, which you will find in the *nuthee* taken on the 5th September 1849, before the assistant magistrate, Mr. Russell, and which appears to have been the clue which led to the search after the prisoner Chintamonee.

"I beg to forward herewith both the original *nuthee* and the depositions now taken before me, and I would observe that these witnesses have been bound to appear before you hereafter if you should think fit to call them.

"As the prisoner is in the Hooghly jail, I have omitted to send for him to inquire of him whether he can read and write, and trust that you will have the goodness to call him before you, if you think it necessary to satisfy yourself further on these points."

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had a wound on his left arm, then nearly healed, which he said he received from the blow of a sickle in a family quarrel. He obtained his livelihood as a cooly.

"It would appear, therefore, that the sixteen or seventeen months intervening between the date of the dacoity, 22nd August 1849, and the date of his apprehension, 18th December 1850, the prisoner was either a vagabond, with no certain or fixed abode, or he has concealed his place of residence to avoid the disclosures it might lead to.

"The prisoner cannot read or write, but he has learnt to write his name.

"The result of this further inquiry makes the case, in my opinion, still stronger against the prisoner, than it was originally, and I think nothing is wanting to complete the proof that the prisoner was present at and wounded in the dacoity.

"I explained to him most fully that the wound on his arm afforded strong grounds for suspicion against him, and that it was of the utmost consequence to him to adduce evidence to show how he came by it. To this he was only able to say, that his first statement was the truth, but that he could give no evidence in support of it.

"I would take the liberty to add the substance of an examination of one Siudoo Mytee, who lately confessed before me to twenty dacoities. He says, in answer to a question,—how did Kartick Kowrah's fingers get wounded? that 'Chintamonee Dome, or Kowrah, was engaged in a dacoity with Kartick Kowrah in the house of a Ghosaul, the former was convicted in that case and is now in prison. I heard that some one of the house was about to strike Chintamonee Dome with a sacrificial knife, when Kartick Kowrah caught hold of it, and so had his fingers cut: he has got the marks of it yet.'

"If anything further was wanting to establish the guilt of the prisoner, the above extract affords a most remarkable and an unexceptionable corroboration of the truth of the charge against the prisoner.

"I have not a doubt in my own mind that the prisoner is guilty, and that his conviction by Mr. Bentall was correct and just.

"I submit the papers of the further investigation for the consideration of the court."

Sentence passed by the lower court.—Ten (10) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) —"The additional sessions judge, in his abstract statement, has erroneously stated that the cause of the prisoner being suspected, searched for, and at length apprehended, was his having absconded from his home. It is now in evidence that the pri-

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soner had left his home one and a half year before the dacoity occurred, in consequence of drought, which threw him into debt. There is nothing to be found on record why the prisoner was first suspected, or why his wife's deposition was taken by the former joint magistrate of Serampore, which served, according to the present joint magistrate's letter, as a clue against him. Again the prisoner is recorded in his confession before the magistrate of 24-Pergunnahs, as inhabitant formerly of Khaneh Kool, Kishennugur, and in his confessions at the thanna, and in his answer at the trial in sessions, as inhabitant formerly of Shauhee Beynah, Bona or Bola, thanna Dewangunge. And the sessions judge, in his letter of the 20th November, para. 2, makes Tata Sali the former place of abode of the prisoner. There is nothing on record to show that these several names indicate one and the same place. Such want of precision and such discrepancy create great confusion, and much trouble as well as doubt.

"It is now in evidence that the prisoner lived from boyhood in the village Shauhee Beynah or Bona; that he was village chowkeedar for years, having succeeded his uncle; that he bore a good character, and cultivated several beegahs of land, and that he quitted the village in consequence of drought, which threw him into difficulties, one and a half year before the dacoity occurred, and that he had no scar on his arm; that he went to the village where he was apprehended, about seven or nine months before his apprehension; that he then had the scar now apparent on his arm, the wound being nearly healed, which he ascribed to a cut from a saw, and that he lived honestly by labouring as a cooly.

"The evidence then against the prisoner is his confessions before the police, and before the magistrate, corroborated by the testimony of his wife, and by the falsity of his story, that the scar on his arm was caused by a fall from a *tál* tree, when he lived at his first abode, Shauhee Beynah. Had this been true, the villagers must have known it, as he was for years chowkeedar of the village.

"The court, therefore, confirm the conviction, but in consequence of the former good character of the prisoner, and his having been enticed and almost forced into going with the dacoits, as stated by his wife, and this being his first offence, mitigate the sentence to five (5) years' imprisonment with labor in irons.

"The court regret to observe that the examination (at the trial) of the witnesses to the confessions taken before the magistrate, is very meagre. It should invariably be close, full, and complete, so as to satisfy the courts, that every precaution had been taken to ensure the confession being perfectly voluntary, given every word at the time by the prisoner, and accurately

recorded. The court would observe, with advertence to the 9th para. of the sessions judge's letter, that had Sindoo Mytee, who confessed to twenty dacoities, given his statement *before* the apprehension of the prisoner, it might have been creditworthy. But these adroit confessors are very apt to look to the jail, when they name persons." • •

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Case of CHINTAMONEE HAREE.

PRESENT:

J. R. COLVIN, Esq., *Judge*.

A. J. M. MILLS, Esq., *Officiating Judge*.

MADUB PATUR

versus

DEENA NAIK (No. 18) AND HURREE RAOT (No. 19).

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Two prisoners in the Southern Cuttack district, convicted of the murder of a boy for the sake of his ornaments, upon their own confessions, well corroborated by the circumstantial evidence in the case, and both sentenced capitally, although the body of the boy was not found, murders of this description appearing to be unusually prevalent in the Cuttack districts.

CRIME CHARGED.—1st count, murder of Ruthee Patur, brother of the prosecutor, and the theft of the ornaments worn by the deceased, valued at Company's rupees 99-10-6; 2nd count, being accessaries before and after the fact in the above murder and theft; and 3rd count, having in their possession property which they knew to be stolen.

Committing Officer, Mr. A. Forbes, magistrate of the Southern Division of zillah Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of zillah Cuttack, on the 25th October 1851.

Remarks by the sessions judge.—"On the 7th September last, Madub Patur, the prosecutor, reported to the darogah stationed at the police *phandee* at Tanghy that his brother Ruthee Patur, a boy of thirteen years and eight months of age, had been missing since noon on Friday, the 5th idem, and stated that he supposed he had either concealed himself somewhere to avoid being sent to school, or that Hurry Burral, Mooley Saboo, Kartick Bearer, Gobind Bearer, Ram Mahapatur and Gobind Pudhan, with whom he was in the habit of consorting, might have made away with him; and he, at the same time, gave in a list of the gold and silver ornaments, valued at rupees 99, which he had on his person at the time he left home. And again, on the 8th and 11th of the month, he filed two other petitions, repeating his suspicions against the above-named persons, and more especially against Ram Mahapatur and Gobind Pudhan, and although search was everywhere made, no trace of Ruthee Patur was found till the morning of the 15th, when Deena Naik, the prisoner No. 18, who resides in the neighbourhood of the plaintiff's house, took a pair of double *noolees*, or gold ear ornaments, for sale to mouza Uchootpore, in the jurisdiction of the Khoordah thanna, distant three or four coss

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from his own village, and was apprehended on suspicion by Ruthee Mahapatur, the Pudhan of the said mouza, who had previously received a letter from Bushtum Mahapatur, the Pudhan of Tanghy, informing him that Ruthee Patur was missing, and directing him to ascertain if he had gone to the house of Bunmalee Mahapatur, uncle to the above-named Ram Mahapatur, at Uchootpore,—he, the said Deena Naik, having, when questioned as to who he was, and where he had come from, said, that his name was Madhub, and that he lived at Sooum, whereas Punchoo Mhaintee, a connexion of his, to whom he had referred his interrogators, stated that his name was Deena, and that he lived at Tanghy; and likewise because he offered the *noolees* for sale for less than their value; and the plaintiff, who had been sent for, having recognized the *noolees* as the property of his brother, Deena Naik was that evening taken before the darogah at Tanghy, and though he at first stated the *noolees* were his own, he confessed the following morning that they belonged to Ruthee Patur, whom he had killed in company with Hurree Raot, who had got the rest of his ornaments. The darogah then apprehended Hurree Raot, the prisoner No. 19, and after producing the rest of the ornaments belonging to the deceased, he, in concert with Deena Naik, pointed out the spot in the jungle where they had killed him, near to which two cloths, and an amulet or *mala* made of wood, belonging to the deceased, were found, but the body had disappeared, and was supposed to have been carried off by some wild animal; and no trace of it, saving a few bones, which were discovered by the plaintiff on the following day, at a short distance from the place, was found. On the 19th of September, the darogah forwarded the prisoners to Pooree, where they arrived on the 22nd, and again confessed before the magistrate that they had killed Ruthee Patur.

"The following is the purport of the confessions, certified by the police darogah to have been made by the prisoners before him, on the 18th September:—

"Confession of Deena Naik.—'Eleven days ago, at about 5 'o'clock P. M., I and Hurree Raot went into the jungle, to search 'for *kukrol*, or bramble-berries, where we fell in with the plain- 'tiff's brother, who on seeing us, threw his *gumcha* or cloth over 'his head, and concealed himself among the bushes; and I then 'went one path, and Hurree Raot another, in order to cut him off, 'and Ruthee Patur observing us, lied down in a bush, and being 'asked by Hurree Raot where he had been concealing himself, he 'replied that he had remained a day and a half in a Brahmin's 'house; and when Hurree Raot told him to go home, he said, that 'if Hurree Raot would kill the *abdan*, or school master, he would 'give him the ornaments he had on his person; and on hearing

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'him say this, Hurree Raot winked or beckoned to me, and we 'retreated a few paces, and agreed together to kill him and take 'his ornaments; and while I threw a *gumcha* over his face, Hurree 'Raot killed him with a hatchet (the prisoner himself afterwards 'admitted that he killed the deceased, while Hurree held the '*gumcha* round his head;) we then stepped aside till he had bled 'to death, and afterwards stripped his body of his ornaments, 'which we put into his, (the deceased's) *butooa*, or bag, and took 'them to Hurree Raot's cow-house, where we placed them inside 'some rope made of straw, and three days afterwards, we took the 'gold *phanseeas* or *noolees* to Chand Saho at Chandpore, who 'after giving them to Bhaig Saho to test, asked to whom they 'belonged, and on Hurree Raot's stating they were his, he said that 'if Hurree Saho brought his brother to confirm his statement, he 'would keep them, or if after the plaintiff's brother, who was 'missing, was found, he would bring them to him, he would pur- 'chase them; but if the plaintiff's brother was not found, he 'should give information at the thanna; we then went away with 'the *phanseeas*, and the next day we took three *kurtees*, or neck 'ornaments, to the buffalo-pen in the jungles, and broke them in 'pieces; and on the following one, I got two *noolees* from Hurree 'Raot, and proceeded to the house of Punchoo Mhaintee, (my 'father's sister's husband,) and the next morning reached Uchoot- 'pore, where Ruthee Mahapatur, on seeing me, asked me my name 'and place of residence, and I told him my name was Deena, and 'that I lived at Sooum Ghur, he then asked me, why I had come 'there, and on my replying that I had come to sell some gold, he 'asked to see it; and after I had showed him the *noolees*, he di- 'rected me to the shop of Bhugwan Saho, saying, he would pur- 'chase them. I then went with the *noolees* to Bhugwan Saho, 'who asked me who I was, and where I resided, and having told 'him that my name was Madhub, and that I lived at Sooum, he 'first took the *noolees* and showed them to Ruthee Mahapatur and 'then went to a *buneea's* to have them valued, and having been 'told they were worth rupees 11-8, he asked me who knew that 'they were mine, and on my referring him to the afore-named 'Punchoo Mhaintee, he and Ruthee Mahapatur accompanied me 'to Koomar Gooroo Ghur, and inquired what he knew regarding 'the *noolees*, and on his telling them, that he knew nothing about 'them, and that my name was Deena, and that I lived at Tanghy, 'they took me and placed me in charge of the *Dulbehrah* (one of 'the village police) and then sent for the plaintiff, who came and 'identified the *noolees*; and I was then brought in charge of bur- 'kundauzes before you (the darogah) at Tanghy, where I confess- 'ed having killed the plaintiff's brother and taken his ornaments, 'in company with Hurree Raot, and with him pointed out the spot 'where we killed him.'

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"Confession of Hurree Raot.—'At the time search was being 'made for the plaintiff's brother, who had concealed himself about 'eleven days ago, on Monday afternoon, about 4 o'clock, I and 'Deena Naik went into the jungle to search for bramble-berries, 'when we fell in with the plaintiff's brother, who, on seeing us, 'threw his *gumcha* over his head, and ran into the jungle, and 'we throwing stones as we proceeded onwards, he hid himself in 'a clump of trees, and on our going up to him, and asking him, 'why he was lying there, he said, he had concealed himself for 'four days, through fear of the *abdan*, and if we could kill the '*abdan*, he would give us his ornaments. We then said, why 'should we kill the *abdan*, we would kill you, (Ruthee Patur) 'and I then took his *gumcha*, and threw it over his face, holding 'it fast behind, and Deena struck him a blow with the hatchet '(lying at thanna) and killed him; after which we took off his 'ornaments, and put them into his (the deceased's) *butooa*, or 'bag, and went and concealed them in some grass-rope, in my 'cow-house, whence I produced them, and confessed after Deena 'Naik had named me as his accomplice, &c.'—the rest of his statement being to the same effect as the above confession of Deena Naik.

"The following is the purport of Deena Naik's statement before the magistrate:—'Three days after Ruthee Patur was 'missing, I and Hurree Raot were looking for bramble-berries in 'the *jungles* under the hills at Tanghy, when we observed some-'thing causing the branches of a certain bush to move or shake, 'and while conjecturing what it could be, Hurree Raot threw a 'stone into the midst of it, and struck some one, who cried out; 'and on going up to the spot, we found that it had struck Ruthee 'Patur, and wounded him on the head, whence blood was flow-'ing; and seeing this, Hurree Raot remarked, that if he (Ruthee 'Patur) went into the village, he would give information against 'him, for throwing stones at him, and having said this, he 'twisted Ruthee Patur's *gumcha* round his face, and threw him 'on the ground, and placing his hand on his head, held him down, 'and told me to kill him; and I took the hatchet (before the 'court) in both my hands, and struck him on the right side of 'his neck, as I stood behind him, and half severed his neck, and 'we afterwards took his ornaments,'—And he in other respects corroborated his Mofussil confessions.

"Hurree Raot also stated as follows before the magistrate:— 'Twelve or thirteen days ago, at about 3 o'clock, on 'Monday afternoon, when I and Deena were searching in the '*jungle* under the hills for bramble-berries, we heard a noise, as 'that of leaves or something else rustling on the ground, in a 'certain clump of trees, and I threw a stone into it, which struck 'plaintiff's brother, Ruthee Patur, on the head, and he cried out; 'and I and Deena Naik ran up, and laid hold of Ruthee, and

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'asked him where he had been for the last four days, and told 'him that his brother had been searching for him; he said, that 'he had concealed himself through fear of the *abdan*, and if we 'would kill him, he would go home. We said, why should we 'kill the *abdan*, we will kill you; and having said this, I twisted 'his *gumcha* round his head across his eyes, and held it fast 'behind his head with my foot, while Deena Naik struck him 'with a hatchet, and he immediately died; we then took his 'ornaments, numbered 1 to 12, and took them away with us, 'and placed them in some grass-rope in my cow-house; we 'also washed the blood off the hatchet before the court in a 'pool of water by the road side, and took it to my house,' &c. The rest of his statement being to the same effect as that made by him in the Mofussil.

"Before this court, both the prisoners Deena Naik and Hurree Raot when called on to plead, denied having killed the deceased Ruthee Patur; but stated that the day after it had been proclaimed by beat of drum, that the plaintiff's brother Hurree Patur was missing, as they were searching together in the jungle for bramble-berries, after having been to see Deena Naik's cotton crop, they heard a hare moving in a bush, when they both threw stones at it and it ran away; they then proceeded a short distance in advance, and again heard something moving among the bushes, which they supposed to be a pig or a deer, and they each threw two stones into the bush, when, hearing something groan, they stood still wondering what it could be, and after a short time, they again threw stones at the place whence it issued, and hearing no further noise, they went up and saw a boy lying there, with blood flowing from a wound near the right ear, and likewise from the left side of his neck, and a *gumcha* lying a few *haths* from him; they also saw some ornaments on his body and others lying by the side by him, and then went away as far as the road, where they consulted together to take his ornaments, as he was dead; and they accordingly did so, &c. And they in other respects corroborated the statements made before the police and the magistrate.

"Madhub Patur, the prosecutor, deposed to the identification of the property of the deceased, and the fact of its having been found in the possession of the prisoners, and likewise to the fact of the prisoners having confessed killing his brother, and pointed out the place where they murdered him; though from the general tenor of his depositions recorded on the 22nd and 24th October, it would appear that he still entertains suspicion that other parties besides the prisoners were implicated in the murder of his brother, and that the spot indicated by the prisoners as that at which the crime was committed may not be the correct one, owing to its proximity to the high road, and both the police thanna, or phandy, and the salt chowkey.

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"The evidence of the witnesses generally also established the facts of the case, as set forth in the Mofussil confessions of the prisoners, and the witnesses Nos. 1, 2, 3 and 4, depose to those confessions having been voluntarily made; but owing to the darogah's having most unaccountably neglected to record the confessions of the prisoners in a formal and proper manner, until three days after they had produced the property and pointed out the place where the deceased (as alleged by them) was killed, they have made very contradictory statements as to the time and place, when and where those confessions were written; for instance, witnesses Nos. 1 and 2, both depose that the confessions were recorded on Tuesday, though one says, in the morning and the other in evening; No. 3, that they were recorded on Friday at the thanna or phandy; and No. 4, that they were written on Thursday at the old sepoy guard-house at Tanghy. However, from their answers to the questions put to them by the court regarding the discrepancies between their different statements, there appears to be no doubt that the prisoners confessed, first of all on Tuesday, the 16th September, after the property had been produced from the cow-house of Hurree Raot, though they were only formally committed to writing on the 18th, and the darogah reported the fact of their having confessed to the magistrate on the 16th.

"The confessions before the magistrate were duly proved by the attesting witnesses to have been voluntarily made.

"The prisoners, when asked, at the conclusion of the trial, whether they had anything to say in their defence, stated that the burkundauz who accompanied them from the thanna to the sudder station, threatened them, and told them to make the same statements before the magistrate as they had done at the thanna; and that, he being present at the time their examinations were recorded, they did so, but they adduced no evidence in support of their statements; and with reference to the general circumstances of the case, their assertions cannot be allowed to have any weight.

"The law officer, for the following reasons, declares, 'that the 'crimes charged against the prisoners are not proved, *viz.*, because 'there are discrepancies between the Mofussil and foujdaree con-'fessions of the prisoners, and the evidence of the witnesses to the 'former are contradictory as to the date, time, and place, on and 'at which they were written; and the prisoners assert they were 'induced to make those confessions, in consequence of their having 'been threatened by the darogah; also because he entertains sus-'picion as to the place pointed out by the prisoners being the one 'at which the deceased was murdered, in consequence of its proxi-'mity to the high road, as well as the police phandy and the bazar 'chutty; and because, according to the plaintiff's statement, suspi-'cion attached to Ram Mahapatur, the son of Pindukee Saontra;

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'and the prisoners on first being apprehended, denied having committed the murder; whereas on the other hand, the sole proof of the guilt of the prisoners rests on the said confessions, which, in his opinion, cannot be implicitly relied on. But from the answers of the prisoners before this court, and the finding of the property belonging to the deceased in their possession, he convicts the prisoners of accidentally killing the deceased by throwing stones at him, supposing him to be some wild animal, and declares them liable to punishment by *deeyut*.'

"From the above *futwa*, I altogether dissent; for although in my opinion doubts may reasonably exist respecting the truth of those parts of the prisoners' statements which relate to their unexpectedly finding the deceased in the jungle, and with reference to the suspicions throughout entertained by the plaintiff, there may have been other persons concerned in the murder of his brother, besides the prisoners, I consider that the confessions of the prisoners before the magistrate, which have been satisfactorily proved by the attesting witnesses to have been voluntarily made, and their answers before this court, and the finding of the deceased's ornaments in their possession, independent of their Mofussil confessions, afford strong presumptive grounds for believing that Ruthee Patur met his death at their hands, whether with or without the assistance of others; and, under all the circumstances of the case, I beg to recommend that they be sentenced to imprisonment for life in transportation.

"The magistrate of Pooree will be requested to call on the darogah to explain why he delayed for three days to record the confessions of the prisoners, and on the receipt of his explanation, it shall be forwarded to the court."

Remarks by the Nizamut Adawlut.—(Present: Messrs A. J. M. Mills and J. R. Colvin,)—Mr. A. J. M. Mills.—"There was much blamable delay on the part of the darogah in taking the confessions of the prisoners down in writing, but I see no grounds for the opinion, arrived at by the law officer, that they have been improperly obtained. It is fully established by the evidence, that the prisoner Deena was apprehended with the *noolees*, or large gold ear-rings, worn by the deceased; that he stated they were his own; that he was taken to the thanna the next night; that on the following morning, *viz.*, the 16th, he was interrogated by the darogah as to what he had done with the other ornaments worn by the deceased, (the ear-rings having been identified by the prosecutor;) that he admitted that the prisoner Hurree Raot had got them; that Hurree Raot was then immediately arrested; that he was confronted with the prisoner Deena; that he admitted that he had the ornaments; that he went to his cow-house and produced a bag containing them, which he had secreted in a heap of straw-

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rope; that both prisoners then made verbal confessions of their guilt, and pointed out the place in the jungle where they had murdered the deceased, and where marks of blood were observed on the grass jungle, and two cloths, and a *mala*, or rosary, belonging to the deceased were found. These facts, which were duly reported to the magistrate on the same day, *viz*., the 16th, strongly corroborate the genuineness of the confessions. The confessions were not committed to writing till the 18th. The witnesses attest them, and declare that the prisoners voluntarily repeated what they had before verbally stated. The variation in their statement as to the exact time and place at which the confessions were recorded, is not, I think, important, while the delay in recording them would, with reference to the facts above detailed, rather justify the conclusion that they were fairly given, than that they were extracted by threats and promises. The prisoners then confessed before the magistrate. These confessions, which are proved to have been freely made, are full and distinct, and complete the proof of the *corpus delicti*, which the finding of the cloths and rosary worn by the deceased imperfectly afforded.

"The prisoners' defence before the sessions judge is that they accidentally killed the deceased and took his ornaments. The law officer, rejecting the confessions under the *supposition* that they were not voluntarily given, credits the story. I deem it to be a pure fiction. The accidental homicide as described was a possible, but not a probable, act, and is quite irreconcilable with the subsequent conduct of the prisoners in stealing the ornaments. The discrepancies alluded to by the law officer in the Mofussil and foujdaree confessions are not material. The latter being taken by a careful and experienced officer (Mr. A. Forbes,) are more minute. But this circumstance, so far from being a ground of distrust, makes them the more worthy of confidence,

"Again, the law officer, though he believes that the prisoners accidentally killed the deceased, entertains suspicion that they did not kill him at the place pointed out, because of its proximity to the road and thanna; but the evidence and map clearly show that the place is at the foot of one of the jungly hills which are infested by wild beasts near Tanghy, a place I have myself often visited; and though not far from the road, the jungle in September is so over-run with rank vegetation as to be almost impervious. A murder could, in my opinion, be committed with as little fear of detection within fifty or one hundread yards of the road as it could be at quadruple the distance. The law officer's suspicions on this point are, therefore, I think, groundless.

"For the above reasons, I am of opinion, that the charge against the prisoners is fully proved. The case is one of much

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atrocity. The poor boy was murdered for the sake of his ornaments. I see no reason to think that other persons were concerned in the murder, and can find no extenuating circumstances, which would justify a secondary punishment, as recommended by the sessions judge. I would sentence both prisoners to suffer death.

MR. J. R. COLVIN.—"The delay with which the confessions of the prisoners were recorded by the darogah, was irregular; but his explanation of it, *viz.*, that the two prisoners at first mutually accused each other of striking the blows with the hatchet, and that he postponed recording the formal confessions till he had satisfied himself that the story of the murder generally was a true one, is a very natural and probable one, and the evidence to the earlier verbal confessions of the murder is distinct. Again, the confessions before the magistrate are full and deliberate, and well-attested. The circumstances of the case leave no doubt that the boy, Ruthee Patur, was murdered, and that, whether the prisoners have, or have not, confessed all the facts connected with the deed, they were themselves accomplices in it. The recommendation of the sessions judge for a sentence of transportation is, doubtless, with reference only to the circumstance of the corpse not having been found and identified. But where, on the whole record, there can be no doubt of the murder having been committed, the recent precedents of the court have settled that the guilty parties shall not escape the just penalty of their crime merely through a failure to find the body.

"I concur in the capital sentence on both the prisoners, proposed by Mr. Mills. The crime of murder of children, and young persons, for the sake of their ornaments appears to be unusually prevalent in the Cuttack districts."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GROODASSEE NAPTINEE

versus

PARAN SIRDAR CHOWKEEDAR.

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Case of PARAN SIRDAR CHOWKEEDAR.

In an attempt to rob a traveller in open day, attended with some corporal injury, a sentence of seven years' imprisonment deemed inadequate to the offence.

CRIME CHARGED.—1st count, with having, while employed as chowkeedar, stopped on the highway, the prosecutrix, with intent to rob her; 2nd count, with assaulting and wounding the prosecutrix, while in prosecution of the intent to rob her, on the highway.

CRIME ESTABLISHED.—Stopping the prosecutrix on the highway with the intention of robbing her, and then and there assaulting and wounding her, he being at the time a police chowkeedar.

Committing Officer, Mr. S. Wauchope, magistrate of zillah Hooghly.

Tried before Mr. C. Steer, officiating sessions judge of zillah Hooghly, on the 19th November 1851.

Remarks by the officiating sessions judge.—"The prosecutrix, an old woman of about fifty, was going to her home in the village of Sooree, zillah Burdwan, having been at Bulleah Ghaut to bathe in the river on the Sunkrant. She was accompanied by Radanath and Coruiah, the former a youth of about fourteen years and the latter an old lean man of between fifty and sixty years of age. They left the village of Jam Gram at about 3 o'clock, and had proceeded by the regular road some twenty or twenty-five beegahs, when they were met by the witness No. 3, Neelkomul, who after asking them where they were bound to, told them to leave the straight road and go to the right as a villain was coming on the road. They accordingly went to the right, and presently the prisoner came up to them from the left. He told the party to stand and deliver. The old woman said they had been bathing in the river and had spent all they had, on which the prisoner seized the cloth round the old woman's waist and began to pull at it. Finding nothing, he desired the old woman to stand still, and he then went towards the old man and the boy. Seeing this, the latter ran off to the village of Jam Gram, and the old man too ran a little distance as far as he could. The prisoner then returned to the old woman and with a club in his hand struck her with it several times. At last he gave her a blow on the top of the head which stunned her. On recovering her senses she laid hold of the prisoner's feet and entreated him to spare her. Soon after the phareedar and chowkeedars of the

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village, having been attracted by the boy's screams, arrived on the spot, and the old woman having pointed out the prisoner as the person who had assaulted her, he was apprehended with a club in his hand, about seven *russees* from where the assault was made.

"Radanath, the boy, and Conniah, the old man, corroborate this account of the old woman, except that part of it which describes the prisoner as having seized the old woman by the cloth, which they did not see. They both say that they are quite sure the prisoner is the man, and the old man deposes that he never took his eyes off him from the moment the assault took place to the moment of his apprehension.

"The witness No. 3, Neelkumul Sirdar, deposes that he overtook the prisoner on the road to Jam Gram; that having left him behind some distance, he met the prosecutrix, the boy, and the old man, whom he warned of the prisoner's approach, and advised them to leave the road they were travelling, and go to the right. They did so, and the witness went on. As he was about to enter the village, he heard a shouting, and looking in the direction whence it proceeded, he saw the old man and the boy running away, and the prisoner assaulting the old woman. The villagers soon after apprehended the prisoner. He says he has known the prisoner for nineteen years, and that he is a notorious scoundrel. He denies having drank liquor with him on the day of the assault.

"Brijohurree Roy, burkundauz, and two chowkeedars of the village of Jam Gram say that they heard the boy's shouts close to the village; that they went out, met the boy; that he pointed out the old woman, and said she had been assaulted by a man, whom he also pointed out, and that on these witnesses going up to the old woman, she with her finger pointed to the prisoner, saying, 'there he goes,' on which they apprehended him about seven or eight *russees* off.

"Dr. Ross described the wound as a severe one. It had laid open the scalp, and the wound was not healed. He said in that state he could not say what effect such an injury might occasion, nor could he pronounce the old woman out of danger.

"I thought it advisable, therefore, to postpone the trial for a few days, to see how it went with the old woman. The case was therefore postponed till the 19th instant, on which date the civil surgeon having deposed in his re-examination that the wound was now well and there was no further fear of bad consequences, and the case for the prosecution having been completed, the prisoner was called upon for his defence.

"He denied the charge, and pleaded, as he had done before the police and the magistrate, that he had been drinking with the

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witness Neelkomul; that he was proceeding to Jam Gram, when he was accused by Brijohurree and the chowkeedars of having assaulted the prosecutrix. He names three witnesses to his good character.

"Of these one says, he believes him to be a proper character, the other two can't speak either to his good or bad character.

"It is to be remarked that the prisoner was once, about six years ago, apprehended on a charge of dacoity, but got off.

"The jury find the prisoner guilty of the charges laid in the calendar. In this, I cannot quite agree. The wounding and beating was clearly not done for the purpose of extorting money, as the prisoner did not resort to violence till he had satisfied himself that the prosecutrix had nothing about her to rob. The assault proceeded from sheer wantonness or vexation arising from the disappointment of his hopes of plunder. I, therefore, convict the prisoner of stopping the prosecutrix on the highway with the intention of robbing her and then and there assaulting and wounding her, he being at the time a police chowkeedar.

"The senseless conduct of the prisoner throughout this transaction cannot fail to be remarked. His want of circumspection and precaution, both before or after the fact, his committing the assault in the sight of a village where was a police out-post and in broad day-light on people who, by their appearance, he must have known could not be worth robbing, the way he beat the woman without any object, his making no attempt to escape, all indicate the truth of what he himself pleads that he had been drinking and was not in his right senses, otherwise they are the acts of a mad-man. These features of the case, make it one therefore, not at all of that heinous stamp which characterizes highway-robbery in general. But the prisoner was a chowkeedar and bound to preserve life and property, and not to be a party to the injury of either. He was drunk very likely, but I regard that as no palliation, and as men in liquor generally betray their real characters putting aside disguise and counterfeit, so I consider the conduct of the prisoner on this occasion shows what his propensities are, and that it is no unjust notoriety that he has obtained as a man of bad character. Under all the circumstances, a sentence of the highest limit which the law allows, appears to me a fit and adequate punishment, and I accordingly sentence the prisoner for seven (7) years with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner has appealed to this court, asserting that the charge against him is the result of a conspiracy against him by the villagers of Jam, with whom he states himself to be at enmity. This assertion, however, is wholly unsupported, and it is absurd to suppose that they could prevail on a stranger to

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suffer a severe wound in order to assist them in satisfying their spite. The appeal is, therefore, rejected. The sessions judge is wrong in considering that the law would only admit of a sentence of seven (7) years' imprisonment against the prisoner. The crime, of which he has found the prisoner guilty, amounts to attempt to commit theft attended with corporal injury. The assistant surgeon, after having the sufferer under his charge for ten or twelve days, could not pronounce her out of danger. The corporal injury (a severe blow on the head) was therefore such as to endanger life. The legal penalty for such an offence is transportation for life, Regulation XVII. of 1817, Section VIII., Clause IV. Even had the injury been of a less degree, the sessions judge had the power to sentence the prisoner to fourteen (14) years' imprisonment and to two (2) years in lieu of stripes; and I think that the case demanded a much severer sentence than that which was passed. I see no reason to believe that the prisoner was drunk. Had I done so, I should not have concurred in the opinion that drunkenness is no palliation of an offence. Whatever may be the theory in this respect, reason and practice are against such a holding. Had the prisoner been drinking, it would not have been difficult for him to prove it by the evidence of the liquor vendor. The person, with whom he asserted that he had been drinking, denied it, and two out of three witnesses who apprehended him immediately after the crime, deposed that he did not appear as if he had been drinking. From the fact of the witness, Neelcomul, warning the travellers against his approach, it is clear that the prisoner was a well-known bad character, and I therefore attribute his *nonchalance* to long impunity in such outrages. No necessity exists for presuming intoxication contrary to the evidence on record."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

RADHAMONEE JALIANEE
versus
HURREE HOLDER.

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Case of HURREE HOLDER.

In a charge of culpable homicide by knocking the deceased into a large river, the law officer of the sessions court acquitted, on the ground of the body not having been found. But in concurrence with the sessions judge, the *futwa* was over-ruled, and the criminal act having occurred in the heat of passion and under provocation, a sentence of six months' imprisonment and labor, commutable to a fine, was deemed sufficient.

CRIME CHARGED.—Culpable homicide of prosecutrix's son, Soroop Paknee, on the river.

Committing Officer, Mr. C. W. Mackillop, assistant exercising powers of joint magistrate at zillah 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of zillah 24-Pergunnahs, on the 1st January 1852.

Remarks by the additional sessions judge.—"Soroop Paknee was the manjee of a fishing boat, and the first four witnesses of the calendar were his crew. They were fishing and their nets got entangled with the nets of another boat of which one Gopee was the manjee, and the prisoner and three others, two of whom were examined on the trial, were the crew. The manjees abused each other, and (as Gopee's boatmen state) Soroop first hit at Goopee with a split bamboo, on which the prisoner, as all the witnesses state, knocked Soroop overboard with a bamboo, which is ten feet long and two seers and three chittacks in weight. Much search was made for the body, in which the prisoner joined, but it had sunk and did not rise again. The prisoner went ashore in the Howrah district, when he was apprehended by the fishermen and taken to the thanna and thence sent to the police of the 24-Pergunnahs, as the crime was committed in this district. It was a sudden dispute and the first blow was struck by the deceased and the prisoner joined in searching for the body. I have no doubt about the homicide, and if the law officer had considered it proved, I should have sentenced the prisoner to three (3) years' imprisonment and a fine of fifty (50) rupees, or to labor until the fine might be paid."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The law officer acquits the prisoner of causing the death of Soroop, on the ground that the body has not been found, and it is possible that he may not have died. He finds him guilty of an assault. There can, however, be no doubt of the fact of Soroop being dead, and of his death being caused by the prisoner. The deceased, however, appears to have been the aggressor, by first striking at the manjee of the boat in which prisoner was a dandee, and the prisoner's act was sudden, and

there is no reason to believe that he was aware that he was likely to cause the death of Soroop by striking him. I find the prisoner guilty of culpable homicide; but, on the above considerations, and as he has been in custody since August, deem a sentence of six (6) months' imprisonment, with a fine of fifty (50) rupees, commutable to labor on non-payment within a week, sufficient."

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PRESENT:

J. R. COLVIN, Esq., *Judge.*

A. J. M. MILLS, Esq., *Officiating Judge.*

MUSST. ASSEE

versus

SUDDYE PURRERA (No. 1) AND DURSUNNEE PATUR (No. 2).

1852. January 24. Case of SUDDYE PURRERA and another.

A second case of the capital punishment of two prisoners, in the Cuttack Provinces, on a conviction of having murdered a young lad, for the sake of his ornaments. The sessions judge had recommended that only the prisoner who was the most bold and forward in the murder, should be sentenced capitally, the other being transported for life; but the Nizamut Adawlut found that the second prisoner had also been a direct and active accomplice, and thought, with reference to the serious prevalence of this description of murder in the Cuttack districts, that the infliction of the extreme penalty of the law on both the prisoners was necessary for the sake of public justice and example.

CRIME CHARGED.—1st count, against prisoner No. 1 of the wilful murder of Arta, son of the prosecutrix; 2nd count, theft of gold ear-rings, from the person of the deceased, to the value of rupees 8-8-6; against prisoner No. 2, 1st count, wilful murder of Arta; 2nd count, being an accomplice in the commission of the said act.

Committing Officer, Mr. R. B. Garrett, magistrate of the central division, zillah Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of zillah Cuttack, on the 15th November 1851.

Remarks by the sessions judge.—"It appears that on Tuesday evening, the 14th of October, Arta, the deceased, a boy of sixteen years of age, after bringing home his cattle from grazing and placing them in the cow-shed, partook of a little refreshment, and again left his home, telling his mother that he was going to the house of Suddye Purrera, his neighbour, to get some tobacco to smoke; and not having returned when the evening meal was ready at about 9 o'clock, his mother called to Suddye Purrera and inquired if her son was at his house; and having been told by him that he was not there, she went back into her house and remained quiet until about 3 or 4 o'clock on Wednesday morning, when finding her son still remained absent, she went in search of him to her neighbour's houses, but was unsuccessful

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in finding him. And that at about 10 o'clock, when Suddye Purrera and Dhunnye Purrera took their cattle to drink at Goburdhun Baboo's new tank, which is about three quarters of a *coss* distant from the prosecutrix's house, the latter discovered a body lying in the water with its throat cut, and called to Gobind Beara, who was also in charge of cattle in the neighbourhood of the tank, to see it, and he, having identified the body to be Arta's, gave information to his mother, who, accompanied by some of her neighbours, went and inspected it, and found that his gold ear-rings, *or noolees*, one a single one, and the other a double one, had been stolen, but that his silver *kurroos*, or bracelets, and a *chunder*, or neck ornament, were still on his body. That intelligence of the occurrence was then communicated to the police darogah, who arrived the following morning, and after examining the body and despatching it to the sudder station, assembled all the neighbouring villagers and inquired of them whether they knew anything about the murder; and having learned that the above-named Suddye Purrera, and Dursunnee Patur, were in the habit of consorting with him, and that Serrye Mhaintee had had a quarrel with the prosecutrix and made use of threatening language to her, he detained them in custody and allowed the other villagers to go to their homes. And Suddye Purrera having some time during the night confessed that he, in company with Serrye Mhaintee and Dursunnee Patur, had killed Arta, the darogah, the following morning, recorded his confession and that of Dursunnee Patur in the presence of the villagers, and caused certain persons among them to attest them as witnesses.

"It also appears that Suddye Purrera produced, in the presence of the witnesses, the single *noolee* belonging to the deceased, and likewise the knife with which he had killed him, the one from his waist, and the other from the *chopper* of his house, but Serrye Mhaintee, who was charged by both of the confessing prisoners as their accomplice, denied having been in any way concerned in the murder. And the prisoners Suddye Purrera and Dursunnee Patur having been forwarded the following day to Cuttack, they, on their arrival there, on the 20th October, made the following confessions before the magistrate:—

"Confession of Suddye Purrera.—'At noon of the day preceding the *ghurbunna sunkrat* (or last day in the month of 'Assin) as I and Serrye Mhaintee were proceeding together to 'cut grass, Serrye Mhaintee proposed to me that we should kill 'Arta and take his *noolees* or ear-rings; and on my remonstrating with him, and telling him I could not do so, as he was my 'cousin and also my playmate and friend, he over-persuaded me, 'by saying there was nothing to fear, that if we were apprehended, we would put some *sindoor* and other things on our 'heads, and the magistrate would do nothing to us, and I con-

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'sented that we should kill him. And on the same evening 'Serrye Mhaintee told me to call Arta, but I again objected, say-'ing he was my cousin, and told him to do so; and he went and 'called Arta, and also Dursunnee Patur, and we all three took 'him to the tank on pretence of giving him some *mahapurshad*, 'or food which had been offered to the idol Juggurnath, where 'Serrye pulled him into the water and held down his head and 'hands, and Dursunnee his feet, while I stuck my knife into his 'neck at Serrye Mhaintee's telling, but my hand trembled and I 'told Serrye to take the knife and cut it, and he did so, and half 'severed his throat; and I afterward took the *noolee* from his 'left ear, which came away of itself, and cut the other from his 'right ear with the knife, and then asked Serrye and Dursunnee 'why they did not take his *kurroos* and *chunder* now that they 'had killed him, but Serrye said, that if we took them they 'would lead to our detection, and we had better leave them alone 'and each take one of the *noolees*, and after throwing the body 'into the tank went away; and as we were going Serrye Mhaintee 'took the *noolees* from me and placed them at the foot of a 'clump of bamboo trees near his house, and we all went home, &c. 'And when the darogah came and apprehended all the villagers, 'I, of my own accord, told him that I and Dursunnee Patur and 'Serrye Mhaintee had killed Arta, and asked him why harrass 'so many persons by apprehending them; and after I and Dur-'sunnee had confessed, and Serrye Mhaintee denied, the darogah 'took me to my house, and I produced the single *noolee* from 'the bamboo clump and gave it to the darogah, and on his asking 'me for the other *noolees*, I told him that Serrye Mhaintee had 'them, but on his asking him and Dursunnee for them they 'denied having them; and when Kartick Mullick, (chowkeedar,) 'again demanded the other *noolees* from me, I took them from 'under the bamboo clump, but told him that there were no other '*noolees* there, and concealed them in my waist, and held them 'between my fingers when my person was searched, so that they 'were not found; but when I was again searched, after my arri-'val at the sudder thanna, the burkundauz discovered them tied 'up in a knot of my cloth, and I admitted that I had falsely 'accused Serrye Mhaintee of having the said *noolees* before the 'Asseressur darogah.'

"The prisoner having afterwards been shown the knife (forwarded by the police) and questioned regarding it, said that it was his, and that he cut Arta's throat with it, and he also stated that the small piece of cloth found near the spot where the body was discovered, was torn from his, the prisoner's, cloth by the deceased at the time he killed him.

"The confession of Dursunnee Patur is almost exactly to the same effect as that of Suddye Purrera, the only difference being

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that he stated that they told Arta as they were taking him to the tank, that they were going to give the *sendha* or bull some intoxicating drug, to make it more furious when fighting (it being the custom of the residents of different villages to amuse themselves occasionally with bull fights) and that he did not specifically state who made the second cut on the throat of the deceased, when the first cut or stab inflicted by Suddye did not succeed to the full extent desired; though it is to be inferred from his statement, that Suddye made both cuts, and this is in accordance with Suddye's Mofussil-confession.

"Before this court the prisoner Suddye Purrera, the prisoner No. 1, pleaded 'not guilty' to the charge of murdering the deceased Arta, but admitted having stolen his *noolees*, and though when asked at the close of the trial if he had anything to say in defence, he alleged that his uncle Dhunnye Purrera gave him the *noolees*, it is evident, from the confused and unintelligible nature of his defence, that his assertion has no foundation in truth. He also alleged that he had been ill-treated by the police to make him confess; but all the witnesses named by him (with the exception of one who could not be found,) when examined by the court, denied all knowledge of the fact.

"Dursunnee Patur, the prisoner No. 2, pleaded 'not guilty' to both charges, and stated in his defence that on Suddye Purrera's confessing and accusing him of being his accomplice in the murder of Arta, he was bound and beat by the police at the house of Kartick Poorsetter, because he would not confess; and was told at day-light, the following morning, by Arut Mhaintee and Netroo Mhaintee that if he would confess they would purchase his release, and he would be made a witness; and he accordingly stated that he laid hold of the deceased's feet; also that as he was being taken to Cuttack, he was told by Koonwur Khan, burkundauz, not to make the magistrate angry by denying, but to tell the same story as he had told in the Mofussil. But two of the three witnesses cited by him in support of his statement denied all knowledge of his being maltreated, and the other was not forthcoming.

"The witnesses to the Mofussil and foujdaree confessions of both the prisoners depose to the fact of their having been voluntarily made, and the evidence of the civil assistant surgeon corroborates the fact of the wound on the deceased's throat having been made by more than one cut as represented in those confessions. The rest of the evidence is entirely of a circumstantial nature, and relates to the facts of the boy Arta having been missing from home on the night of the murder, the finding of the body, and the inquest held thereon by the police, and the finding and identification of the double *noolees* or ear-rings on the person of Suddye Purrera after his arrival at the sudder thanna.

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"The *futwa* of the law officer declares both charges preferred against the prisoner Suddye Purrera to be established against him by his own confessions before the police darogah and the magistrate, and his admission before this court that he stole the *noolees;* and that the 2nd count only is established against Dursunnee Patur by his confessions before the darogah and the magistrate; and declares them liable to punishment by *akoobut,* or *kissas,* in consequence of the legal requirements necessary to warrant the latter being present in the circumstances attending the case.

"In the guilt of the prisoners thus declared to be established, I fully concur; for notwithstanding there are some discrepancies between the different confessions made by the prisoners, inasmuch that Suddye Purrera stated in the Mofussil, that he alone cut Arta's throat, and in the foujdaree court, that he and Serrye Mhaintee each inflicted one cut on it, and he is represented in the police reports and by the witnesses to have produced the *noolee,* which he delivered up to the Asseressur darogah, from his waist, though he stated before the magistrate that he produced it from under a clump of bamboo trees near his house, and Dursunnee Patur first stated in the Mofussil that Suddye Purrera took only one of the *noolees* and gave the other, a double one, to Serrye Mhaintee to divide between himself and him, (Dursunnee,) and afterwards in the foujdaree court that Suddye Purrera kept all the *noolees,* and it is further somewhat difficult to imagine that the deceased, while struggling with the prisoners, should have torn such a very minute particle of cloth from the corner of Suddye Purrera's *dhotee* or cloth, as that which was laid before the court, the same being only seven fingers breath long, and four wide, I do not consider these circumstances sufficient to cast doubt on the genuineness of the confessions; those made before the magistrate being much more full and detailed than those made before the police darogah. Therefore, seeing no extenuating circumstances in favor of the prisoner, Suddye Purrera, who twice admitted that he cut the throat of Arta, the whole of whose ornaments were found in his possession, I would sentence him to suffer the extreme penalty of the law; and as Dursunnee did not take quite so prominent a part in the murder, and none of the deceased's property was found in his possession, I beg to recommend, in consideration of his age, which does not exceed twenty years, that his life be spared, and that he be sentenced to imprisonment for life in transportation beyond sea."

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and J. R. Colvin.)—Mr. A. J. M. Mills.—"Of the guilt of the prisoners there is no doubt. They both con-

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fessed before the darogah and the magistrate, and their confessions have been duly attested and verified. The confession of the prisoner, Suddye Purrera, is strongly corroborated by the fact of the finding of the two ear-rings, which are proved to have belonged to the deceased and to have been always worn by him, on his person,—of his producing the piece of cloth, which he admitted the deceased had torn from his *dhotee* in his struggles,—and of the piece fitting to the said *dhotee*, I see no reason to doubt the possibility of the deceased tearing off the piece of cloth in question, as is suggested by the judge, while the evidence to the darogah observing the prisoner's *dhotee* torn, to his questioning him concerning it, and to the prisoner going and producing the piece from the place where the murder was committed, is irresistibly convincing. The prisoner Suddye Purrera took the most active part in the murder, but the other prisoner by his own confession aided and abetted in it, and both are, in my opinion, equally guilty. The judge would spare the life of Dursunnee in consideration of his tender age; but I observe that both prisoners are stated to be of the same age, *viz.*, twenty, and as they have been guilty of a foul murder of a poor boy for the sake of his ornaments, (a crime which is of frequent occurrence in the Cuttack province) I am of opinion that they should both be sentenced to suffer death."

MR. J. R. COLVIN.—"The guilt of both the prisoners is conclusively established. The first prisoner, Suddye Purrera, was, doubtless, the most bold and forward in the murder, and all the gold ornaments were produced by him, or found in his possession; but the other, Dursunnee Pattur, was a direct and active accomplice. Looking to the serious prevalence of this crime of murder for the sake of ornaments in the Cuttack province, I think that public justice requires, for the purposes of example, the infliction of the extreme penalty of the law on both the prisoners. I concur therefore in sentencing both capitally, as proposed by Mr. A. J. M. Mills."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GORACHAND ROY

versus

TARACHAND KHARA (No. 5), BENUD MANA (No. 6), TAKOORDOSS SAHOO (No. 7), MOHUN HAJRAH (No. 8) AND GORACHAND SIRDAR SEMANADAR (No. 9).

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Case of TARACHAND KHARA and others.

The sentence passed upon the prisoners in a case of dacoity, affirmed by the Nizamut Adawlut.

CRIME CHARGED.—Dacoity in the house of the prosecutor (Gorachand Roy) and his brother (Pelaram Roy, witness No. 1,) and plundering therefrom property to the value of rupees 161 and rupees 760 respectively; 2nd count, aiding and abetting in the above dacoity; and 3rd count, knowingly retaining in their possession plundered property acquired by the above dacoity.

CRIME ESTABLISHED.—Nos. 5, 7, 8 and 9, dacoity, and plundering property to the value of rupees 921. No. 6 receiving property knowing it to have been stolen.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 17th October 1851.

Remarks by the sessions judge.—"The prisoners plead 'not guilty.' The prosecutor deposes that his house was burglariously entered by a gang of armed dacoits on the night of the 1st September, who plundered it of property to the value of Company's rupees 921. The darogah proceeded to the spot on the 3rd September, and arrested the prisoners and others, and the prosecutor then declared that he identified, by the light of a *mussal*, the prisoner No. 4, Kisto Haree, the prisoner No. 5, Tarachand Khara, and the prisoner No. 9, Gorachand Sirdar. In their houses were found articles of property which the prosecutor identified as belonging to him and his brothers, who all reside in the same house. When the prisoners Nos. 6, 7, 8 and 9, were arrested, they produced some of the stolen property, confessing at the same time that they were aware to whom it belonged, but denying their complicity in the robbery, and these confessions they repeated before the magistrate. The evidence of the prosecutor and his brother Pelaram as to the identity of the prisoners Nos. 4, 5 and 9, must be rejected as altogether improbable and unworthy of credit. Were there truth in their statements, it is obvious they would have mentioned the prisoners' names to the witnesses (amongst whom was the chowkeedar of the village) who came to the house on the morning succeeding

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the robbery to gather information, with a view to make a report at the thanna; but neither to them, nor to the police phareedar, who came to the spot the following day, the 2nd September, did prosecutor or his brother mention the names of any party whatever. Their memory only served them for the first time when the darogah arrested the prisoners on the 3rd September. The confessions of the prisoners Nos. 7, 8 and 9, are fully borne out by the evidence for the prosecution; and in the absence of all proof to the contrary, the presumption is strong that Nos. 7, 8, and 9, were concerned in the robbery. The prisoner No. 5 denies his guilt from the first, but the discovery of the *gilaff* in his house, under the circumstances stated, is presumptive of his being concerned in the robbery. The prisoner No. 6 proves in his defence that he received the stolen property from another party, which limits his guilt to receiving property, knowing it to have been stolen. I, therefore, convict the prisoners Nos. 5, 7, 8 and 9, on the first count, and the prisoner No. 6 on the 3rd count of the charge, and sentence No. 5, Tarachand Khara, No. 7, Takoordoss Sahoo, No. 8, Mohun Hajrah, No. 9, Gorachand Sirdar, the first three to seven (7), and the last to nine (9) years' imprisonment (he being a chowkeedar or semanadar of a contiguous village at the time he committed the robbery,) and the prisoner No. 6, Benud Mana, to five (5) years' imprisonment, all with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed, but on an attentive consideration of the evidence, and of objections urged by them, I see no reason to doubt the propriety of their conviction of the crimes laid to their charge.

"The prisoners Nos. 7, 8 and 9, gave up a portion of the plundered property and admitted before the darogah and the magistrate that they were cognizant of the manner in which it had been obtained. The admission of the prisoner No. 9, amounts, indeed, to accessaryship after the fact. The finding of a quantity of the stolen silk, secreted in the thatch of the house of prisoner No. 6, which he admits the prisoner No. 5, gave him to keep, is conclusive proof of a guilty knowledge. The prisoner No. 5, who is implicated in the admissions of the other prisoners, denies all knowledge of two articles of the stolen property which his mother produced from a basket-full of cow dung, but the evidence to its finding is strong, and affords presumptive proof of his guilt. I confirm the sentence passed by the sessions judge."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

NUFFER DOME.

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Case of NUFFER DOME.

As the deceased though supposed to be still missing, was not dead when last seen, and the body was never found, the court held that it would be unsafe to convict the prisoner of the murder charged. The court found him guilty of wounding with intent to murder and robbery, and of being a professional thug, and sentenced him to imprisonment for life in transportation.

CRIME CHARGED.—1st count, murder of Bhowanydeen Doobey, and wounding Chokeylal Doobey at Ashna thanna, Operbunda, zillah Beerbhoom, and plundering their property; 2nd count, with knowingly participating in the plundered property; 3rd count, being a *thug* by profession and belonging to a gang of *thugs*; 4th count, aiding and abetting in the murder of Bhowanydeen Doobey, and wounding of Chokeylal Doobey and plundering of their property.

Committing Officer, Mr. C. H. Keighly, assistant, general superintendent for the suppression of *thuggee* dacoity, Bengal.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 18th December 1851.

Remarks by the sessions judge.—"The circumstances attending this trial are as follow:

"Two persons, Bhowanydeen Doobey, (deceased,) and Chokeylal Doobey, brothers, were returning from a pilgrimage to Juggurnath, to their homes in Bundlecund, by the route of Byjenath, and had reached the village of Ashna, in the Beerbhoom district, when they fell in with eight or ten other persons, who stated they were going on a pilgrimage to Benares *viâ* Byjenath, and proposed to the two travellers that they should accompany them, to which they assented.

"On the morning of the 24th February 1834, they all set out and on reaching a *nullah* in the midst of some jungle, it was agreed to sit down and smoke. Whilst so situated, the two travellers, Bhowanydeen Doobey and Chokeylal Doobey, were simultaneously strangled by their companions, who finding they did not die as quickly as desired, proceeded to cut their throats. Conceiving them dead, they stripped them of their property, carried them into the jungle, and covered them with sand and the boughs of trees; Chokeylal Doobey, after a short time, recovered his senses, and finding that his brother was not quite dead, proceeded in search of assistance.

"He arrived at the village of Jurdiha, and was ultimately taken to the police, where his wound was bound up and he recovered sufficiently to relate all that had occurred. The darogah proceeded to the spot pointed out by Chokeylal where the murder had been committed, but he failed in discovering the body of Bhowanydeen or any traces of the murderers. Chokey-

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lal Doobey was then forwarded to the magistrate of Beerbhoom, before whom he gave his deposition on oath of all that had taken place.

"Nothing more was heard of the murder till the arrest of the approver Cashee Buxshee, on the 22nd September 1837. In his confession before the assistant general superintendent for the suppression of *thuggee* at Moorshedabad, he stated that in the month of Magh 1240 B. S., he and nine or ten others, whose names he mentioned (the prisoner Nuffer Dome amongst others), after inveigling into their company Bhowanydeen Doobey and his brother Chokeylal Doobey, at the village of Ashna, strangled them, *cut their throats*, and robbed them of all the property they had and hid their bodies in the jungle. Since the prisoner Nuffer Dome was denounced by his confederates, he has evaded the vigilance of the police till May 1851, when he was traced to the village of Harroo, in the Jessore district, and there arrested on the 10th of the month above-stated.

"Before the assistant general superintendent, the prisoner confesses to having, in the month of Magh 1240 B. S., with eight or ten others inveigled two travellers into their company; to having strangled them (one with his own hands) a short distance west of the village of Ashna, in the Beerbhoom district; to having cut their throats and afterwards concealed their bodies in the jungle, under the impression that they were dead. He likewise confesses to having participated in the property plundered from the said parties, and to his being a *thug* by education and pursuit. He adheres to his confession before this court.

"Chokeylal Doobey, the person who survived the desperate attempts to murder him, is not to be found; but his deposition* given before the magistrate of Beerbhoom, duly authenticated by that officer, is filed with the proceedings. In this he relates all the circumstances of his brother's murder, and the attack made on himself, which entirely corroborate the confessions of the prisoner, and the evidence of the witness Cashee Buxshee given at Moorshedabad in September 1837, before the committing officer, and in this court.

"I attach no value to the testimony of the witness Surroop Dome, as it is not on record that he, on any previous occasion, implicated the prisoner, as being concerned with him in any specific act of *thuggee*, though he did denounce him as a *thug* at Moorshedabad in September 1840.

"The prisoner, in one of his confessions before the assistant general superintendent, *viz.*, on the 23rd May, denies his acquaintance with Cashee Buxshee, and that he was concerned

* Dated 1st March 1834.

with him in any *thuggee* expedition, but in a subsequent confession, of the 28th of the same month, regarding the murder at Ashna, he then admits he knows Cashee Buxshee, and that he was an accomplice in the crime. I attach credit to the second confession, as it is corroborated by Cashee Buxshee's evidence given in 1837, fifteen years ago, when he, Cashee, could have had no object, if he, (prisoner,) were not concerned, in denouncing him as his accomplice.

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"As, however, there is a discrepancy, though a slight one, between the evidence of Cashee Buxshee at Moorshedabad and in this court, as to who the party was that actually murdered Bhowanydeen and his brother, and as Cashee Buxshee's evidence in this court does not corroborate the confession on this head, the prisoner is entitled to the benefit of it.

"There can be no doubt, however, that he, (the prisoner,) is guilty of the 2nd, 3rd and 4th counts of the charge on which he is arraigned. His confessions are corroborated by a chain of evidence which carries conviction with it. The assessors with whose assistance the trial has been held, declare the prisoner guilty of the 2nd, 3rd and 4th counts of the charge, and concurring in this finding, I convict him of the same, and recommend that a sentence of imprisonment for life, in transportation beyond seas, be passed upon him."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner pleaded guilty of being an accomplice in the crime laid to his charge, and of being a *thug* by profession. Cashee Buxshee, in his confession before the assistant for the suppression of *thuggee*, taken in 1837, stated that Charan Dass and *the prisoner* strangled the two travellers; he, as an approver, deposed on the trial that Charan Dass and *either Soubul Dome* or the *prisoner* was the '*buhtootes*' or stranglers on the occasion. His evidence is confirmed in all material points by the testimony of Chokeylal, the wounded traveller, recorded by the magistrate of Beerbhoom in 1834, and the confession of the prisoner; but the sessions judge would give the prisoner the benefit of the contradictory statement of the approver as to his being one of the principals, and not sentence him capitally. Independent of this ground for a mitigation of punishment, there is another and stronger reason, which induces me not to propose a capital sentence, *viz.*, the absence of satisfactory proof of the '*corpus delecti.*' The wounded traveller stated in his deposition above alluded to that his brother was so far sensible when he left him as to desire him to go and seek assistance; but when the darogah arrived at the spot, neither he, nor his body was to be found, though a broken necklace and other trifling articles belonging to the travellers, indicated the place of the occurrence. As Chokeylal Doobey is not now forthcoming, there is no *certain* intelli-

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gence of Bhowany Doobey being still missing. It is possible, therefore, though of course very improbable, that he may be alive. Under the above circumstances, I convict the prisoner of being an accomplice in the wounding of Bhowany Doobey and Chokeylal Doobey, with the intent to murder them, and in the robbing them of their property, and on the 3rd count of the calendar of being by profession a *thug*, and sentence him to imprisonment for life, in transportation."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

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The prisoner who was convicted by the sessions judge, in the first case of embezzlement was acquitted by the Nizamut Adawlut, on the ground that the offence committed by the prisoner did not amount to embezzlement. The court noticed the defectiveness of the indictment, the omission to take the deposition of the principal sudder ameen on oath, and the irregularity of admitting a *roobukaree* of that officer in proof of a fact essential to the conviction of the prisoner as legal evidence.

In the second case, the court convict the prisoner of theft as charged in the first count, and not of fraudulently taking cash and bank notes as found by the sessions judge, and sentence him to nine years' imprisonment with labor and in irons, and point out an illegality in the sentence awarded by the sessions judge.

CRIME CHARGED.—IN CASE NO. 1.—Embezzlement, in having drawn the salary of the principal sudder ameen, amounting to rupees 400, and appropriated the same to his own use. IN CASE NO. 2,—1st count, stealing cash and bank notes to the value of rupees 2,201-12-7½, from the treasury of the Dewanny Adawlut on the 22nd December 1850, corresponding with 8th Poos 1257 B. S.; 2nd count, receiving stolen property, knowing that such property had been obtained in the perpetration of theft; 3rd count, fraudulently taking cash and bank notes from the treasury of the Dewanny Adawlut of zillah Rungpore, and absconding therewith.

CRIME ESTABLISHED.—IN CASE NO. 1.—Embezzlement, in having drawn the salary of the principal sudder ameen, amounting to rupees 400, and appropriating the same to his own use. IN CASE NO. 2—Fraudulently taking cash and bank notes from the treasury of the Dewanny Adawlut of zillah Rungpore, and absconding therewith.

Committing Officer, Mr. A. G. MacDonald, magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 8th November 1851.

Remarks by the sessions Judge:—IN CASE NO. 1.—"I tried this and the following case under Construction No. 975.

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"From the statement of the prosecutor and the evidence adduced on the trial, it was proved that, after the principal sudder ameen had gone away on leave in September 1850, the prisoner (a mohurir of the judge's treasury of this district) fraudulently took, on the 2nd November 1850, from Radha Mohun Ghosal, the treasurer of the judge's office (witness No 1,) (who had long known and entirely trusted the mohurir, with whom he (mohurir,) lived and by whom he was fed) the sum of rupees four hundred (rupees 400) account salary of the principal sudder ameen for September 1850, telling him that the principal sudder ameen had applied to the judge (which was not true) to cause his salary for September to be remitted to him by means of *hoondee* in favor of one Khoda Newaz at Calcutta (a person wholly unknown to the principal sudder ameen), and *granted a receipt for the money* (on the right side of the *khurch buhee*) *signing his own name* on the part of the principal sudder ameen; subsequently after the prisoner had absconded, on 22nd December 1850, with bank notes, &c., stolen from the judge's treasury, the principal sudder ameen sent for his salary for September, when it was discovered that the prisoner had fraudulently drawn the amount and appropriated it to his own use. On the apprehension of the prisoner at Monghyr, and on being brought back to Rungpore, a *hoondee* dated 2nd November 1850, granted by Neem Chand, a banker (witness No. 4), in favor of Khoda Newaz for rupees four (4), as value received from Ahmud Bux (the name of the principal sudder ameen) was found among his, (prisoner's) property. At the time the treasurer paid the rupees 400 in question to the prisoner, the prisoner wrote in the *khurch buhee* (on the left side of it) 'that 'having got a *hoondee* for rupees 400 *from the kotee of Pertab 'Singh Baboo* (a banker in the district) (which was false) 'account of the salary of the principal sudder ameen for September, in favor of Khoda Newaz, at Calcutta, the above sum 'had been paid to him, (prisoner,)' and the prisoner the next day showed the treasurer a Nagree *hoondee* purporting to be from Pertab Singh for the sum in question, which he, (treasurer,) believes to be the one above referred to, granted by Neem Chand for rupees 4, which he could not satisfy himself of the correctness or incorrectness of, not knowing Nagree, of which the prisoner was aware, whence the imposition he practised to cover the fraud he had committed.

"Though the prisoner, after his apprehension and arrival at Rungpore, and before he had been in *hajut*, in his answer, in the summary inquiry held by the judge, *admitted* (as fully corroborated by evidence on the trial) having written and signed the receipt for rupees 400 paid to him by the treasurer, he denied these facts in the foujdaree, in consequence, it is presumed, of having been in *hajut* and there tutored.

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"The prisoner (whose conduct it was notorious had, at times, been outrageous, impudent and insufferable, having been removed from the kutcherry once or twice,) before the acting magistrate Mr. F. Tucker, while investigating the case in the first instance, and who, after commitment by Mr. MacDonald, the magistrate, observed in a petition presented to him, that he had been instigated by the commissioner of revenue (Mr. T. Taylor) (because he happened to stay, when on circuit, a fortnight with the judge) to commit him, and that he, (magistrate,) had unjustly committed him, and who, on the present trial, was most violent in his conduct, and committed such frequent and gross contempts of court that (from their frequency) it would have been vain and prejudicial on the score of delay in the trial of this and the following case, to have punished him, pertinaciously refused, though repeatedly asked to do so, either to plead to the charge, or to offer any defence (though he cross-examined the witnesses throughout the trial), saying that he objected to be tried by this court or by the commissioner.

"The *futwa* found the prisoner guilty of the charge of embezzlement, considering him liable to punishment by *tazeer*, in which finding I concurred, reserving my sentence until I had tried the following and more serious case against the prisoner."

IN CASE NO. 2.—"From the statement of the prosecutor (Government pleader) and the evidence adduced on the trial, it was proved that the prisoner, a mohurir of the judge's treasury of this zillah, was frequently entrusted with the treasury key by the treasurer (witness No. 4) for the purpose of disbursing or locking up money; that on Sunday, the 22nd December 1850, the prisoner, without the knowledge of the treasurer, went to the court house, and in the presence of the burkundauz guard, to whom he stated he had been sent for cash and notes (wholly untrue) opened the treasury chest, and took therefrom cash and bank notes to the amount of rupees 2,201-12-7½, with the registers of bank notes and treasury warrants, and on the night of the same day, accompanied by his mistress and a servant, absconded in palanquins. On the following day, *viz.*, 23rd December 1850, the treasurer, not finding the cash and bank notes in the treasury chest, reported the circumstances to the judge (stating the public monies abstracted to have amounted to the sum above stated (rupees 2,201-12-7½,) *viz.*, in bank notes rupees 1,945 and in cash 256-12-7½, and which was reported by the judge to government on 27th December 1850) who sent a *roobukaree* to the magistrate, requesting him to adopt measures for the apprehension of the prisoner. One Seraj Khan (witness No. 3), was deputed by the magistrate in quest of the prisoner, who having obtained clue to the route the prisoner had taken, followed him on foot a distance of more than 200 miles, and ultimately traced him to the

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district of Monghyr, where he was apprehended by the joint magistrate (Mr. G. G. Balfour,) with the stolen cash and bank notes in his possession to the value of rupees 2,126-4-6, together with the public registers of bank notes and treasury warrants.

"A preliminary investigation was held by the judge of the district, by whom the prisoner was made over to the magistrate for trial, and the above facts having been proved, he was committed to the sessions on the charges contained in the calendar.

"On the trial the facts of the prisoner having come about 10 A. M. on Sunday, the 22nd December 1850, to the judge's kutcherry with the keys of the treasure chest (how obtained was not proved), and on a false pretence had the door leading into the treasury room, opened by the burkundauz (witness No. 1,) on guard, and having afterwards, in the presence of this burkundauz and another (witness No. 2,) unlocked the treasure chest, and taken therefrom a bag of rupees and a *polinda* or envelope, seemingly containing bank notes (all found upon the prisoner on apprehension) with the register of treasury warrants, and never having returned to the treasury again that day, were fully proved by witnesses Nos. 1 and 2.

"Witness No. 3 proved how he traced the prisoner to a *surai* at Monghyr (a distance of 242 miles from Rungpore) where he recognised him seated, and on immediately informing the joint magistrate had him apprehended by the police, when in the prisoner's palkee were found among his personal effects, of the treasury bank notes abstracted, bank notes to the amount of rupees 1,870, with cash to the amount of 250, also the stolen *register of bank notes* (which he had taken, no doubt, that the notes should not be discovered) and register of treasury warrants.

"The bank notes recovered as above stated, *all corresponded* with those entered in the handwriting of the treasurer, in the *register* of bank notes found on the prisoner, proof also being adduced on the trial as to the parties from whom the treasurer had received some of the bank notes particularly one, *viz.*, No. 7797 for rupees 1000, which had only a few days before the prisoner's abscondment, been received from the collector, in part payment of the civil abstract, which the prisoner absurdly alleged to have privately purchased from the collectorate. On the evidence of witness No. 22 (the acting clerk of the judge's court) it was also proved that the prisoner had given witness, after he had abstracted the public monies on the day of, and before his, abscondment, a bank note, in halves, *belonging to the treasury*, *viz.*, No. 26,408 to the value of rupees fifty (50) in exchange for cash received, which witness did not know, till after the prisoner's flight, had belonged to the treasury (having previously deceived witness as to having sent in a letter of witness to his family, three bank notes for this amount, one for rupees 10 and two for rupees 20 each, which he never enclosed.)

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"The prisoner obstinately refused to plead to the charge, or make any defence, though continually asked to do so, though he cross-examined the witnesses; his conduct being marked throughout the trial, as in the previous case, with turbulence and the grossest contempts of court.

"The *futwa* found the prisoner guilty of the 3rd count, considering him liable to punishment by *akoobut*, in which finding *having concurred, I passed such measure of punishment as his offences, respectively, appeared to merit.*"

Sentence passed by the lower court.—In this case (No. 2) under Clause 7, Section II., Regulation LIII. of 1803 to imprisonment with hard labor for seven (7) years, and to two (2) years' additional imprisonment, in lieu of corporal punishment, and after the expiration of the above period, *viz.*, nine (9) years, for the preceding case (No. 1), to five (5) years' imprisonment without labor, agreeably to Section III. Regulation II. of 1813, as prescribed by Clause 2, Section VI. Regulation XVIII. of 1817.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner has been convicted in two separate cases; in the first case of embezzlement, in having drawn the salary of the principal sudder ameen, amounting to rupees 400, and appropriated the same to his own use, and in the second case, in the third count of the charge, *viz.*, fraudulently taking cash and bank notes from the treasury of the Dewanny Adawlut of zillah Rungpore and absconding therewith, has been sentenced to fourteen (14) years' imprisonment, *viz.*, five (5) years in the first without labor, and nine (9) years in the second case with labor and in irons.

"The prisoner obstinately refused to plead to the charges. In his petition of appeal, which is a rambling document, twenty-eight *cubits in length*, he urges various objections to the trial, evidence and sentence, seeking to make up for the general worthlessness of the pleas by charging the sessions judge and his *amlah* with substituting another defence for that which he made in the preliminary inquiry held by him as civil judge, by imputing to him general acts of corruption, by attributing unworthy motives to the committing magistrate, and by aspersing the character and conduct of the principal native officers attached to the magistrate and sessions court and also to those of the collector's office. It is unnecessary to consider his defence in this case, as the conviction cannot be sustained on legal grounds. To constitute the crime of embezzlement, it is necessary to prove that the prisoner was the servant of the person whose money he appropriated, that he received it by virtue of that employment, and then feloniously embezzled it. In this case such proof is altogether wanting. The prisoner was not employed under the principal sudder ameen, nor had he any authority to receive the money. His alleged offence consists

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in taking from the treasurer rupees 400, falsely alleging that he was authorized to receive it. If proved it amounts to cheating, or, in legal phraseology, to obtaining money under false pretences, not to embezzlement. As conviction cannot be had for this offence on an indictment for embezzlement, the prisoner must be acquitted of the crime laid to his charge. Further, the indictment is defective, inasmuch, as it does not specify the nature of the prisoner's service, and that he received the money by reason of such employment, as required by Section XIII. Act XIII. of 1850, and the omission to record the deposition of the principal sudder ameen, which was essential to the conviction of the prisoner, vitiates the proceedings altogether. The sessions judge should have known that the *roobukaree* of the principal sudder ameen, stating that he did not give the prisoner permission to draw his salary, cannot be admitted as legal evidence. The prisoner had the right to have the principal sudder ameen examined in his presence, and to cross-examine *him* upon it.

" In the 2nd case of the numerous pleas urged in the petition of appeal, the following, which alone bear on the case, are worthy of consideration :

" *Firstly.*—That the judge was not competent to try the case, as he is the prosecutor. With reference to this point, I would observe that the sessions judge was fully authorized to try the case, under Construction 975. He sent the case in his civil capacity to the magistrate for trial, and the magistrate committed it on his own discretion. There is, therefore, nothing to bar the sessions judge's jurisdiction.

" *Secondly.*—That rupees 700 of the money said to have been stolen, was, on the day of the alleged theft, entered in the inefficient balance as advanced to the judge on his private account, and that the judge and the treasurer fraudulently blotted out the entry. It is proved by the treasurer that the item was written off the inefficient balance on the 20th of December. His imputing a criminal act to the treasurer and the judge, is as unsupported by evidence, as it is manifestly founded on malice.

" *Thirdly.*—The same observation is applicable to the third plea, that the judge and his *amlah* substituted another defence for that given by the prisoner at the preliminary investigation, and forged his name to the substituted document. The defence in question, in which the prisoner merely admits that he took by mistake the register of bank notes with him, is duly proved by the writer and other witnesses, whose evidence the prisoner only impugns by assailing their character.

" *Fourthly.*—That the witnesses for the prosecution have joined in the conspiracy to ruin him, and that their evidence is unworthy of belief.

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"*Fifthly.*—That the register of notes was not found in his possession. The two last pleas are utterly without foundation. I have attentively considered the case, and am of opinion that the guilt of the prisoner is established on most clear and unimpeachable evidence.

"It is proved by the public accounts, which bear the signature of the treasurer and judge, that there were on the 21st of December rupees 2,201-12-7½ in cash and bank notes, in the dewanny treasury, the property of Government, besides other monies not appertaining to that account, and that on the 23rd of December rupees 2,545 were reported by the treasurer to have been abstracted therefrom. The evidence to the prisoner opening the treasury on Sunday the 21st, and to his taking away cash and bank notes on the false pretence that he had been sent for the money by the judge; to his absconding with his mistress on that day; to his travelling as a moonsiff; to his being followed and apprehended in the Monghyr district; to the finding in his possession cash and bank notes to the amount of 2,126-4-6, together with the public register of bank notes and treasury warrants; to the fact of the bank notes corresponding with those entered in the handwriting of the treasurer in the register of bank notes so found; and to the treasurer receiving the note for rupees 1,000 No. 7797, from the collector's treasury only a few days before the robbery, is so strong and conclusive, as to leave no doubt of the prisoner's guilt. I am of opinion, however, that the prisoner should be convicted on the first count of the charge, *viz.*, theft. The money stolen was in the legal custody of the treasurer; the prisoner got possession of the keys of the treasury, and by reason of his being a servant of Government was permitted to open it, and take away the money. Thus knowingly taking and conveying away the goods of another and converting them to his own use, constitutes theft. Convicting the prisoner, therefore, of theft, and adverting to the aggravated breach of trust which he has committed, I sentence him to nine (9) years' imprisonment with labor and in irons.

"The magistrate will pay to the witness Seraj Khan a reward of 10 per cent. on the value of the property recovered, through his meritorious exertions.

"The court observe that corporal punishment not being legal for fraudulently taking cash and bank notes from the treasury, the two years' imprisonment in lieu of stripes should not have been added; but the conviction having now been altered to one of theft, the sentence has been upheld."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

AKOOTRAMNATH

versus

SHEIKH SOOBUL.

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January 30.

Case of SHEIKH SOOBUL.

The sentence awarded by the sessions judge, in a case of culpable homicide, affirmed by the Nizamut Adawlut. The court remarked that the sentence passed by the sessions judge, was, with reference to the aggravated nature of the case, unduly light.

CRIME CHARGED.—Wilful murder of Indronarain Nath, father of the prosecutor.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. R. Cairnes Raikes, magistrate of Mymensingh.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensingh, on the 11th December 1851.

Remarks by the sessions judge.—"From the evidence of the witnesses to the circumstances, it appears, that one day a quarrel arose between the deceased, who was an old man, and the prisoner, about the former's cows having strayed into the latter's rice field, when they struck each other a blow or two and were separated, and about evening of the next day one of the witnesses found the deceased lying on the ground, at a short distance from his house, and on being asked what was the matter, said, the prisoner had beaten and kicked him and just gone off. He was taken to his house and died that night. The prisoner was apprehended, and admitted in the Mofussil and before the magistrate, the quarrel on the first day, and that he had beaten and kicked the deceased on the 23rd day, because he had again allowed his cows to go into his rice field. Before this court he said, he had only struck the deceased one blow, and named two witnesses who had only seen the occurrence of the first day. The evidence of the civil surgeon shows, that the head, face and back were much bruised, the lungs injured, and thirteen of the ribs fractured. The *futwa* of the law officer convicts the prisoner of culpable homicide, in which I concurred, and have passed a severer sentence than usual, on account of the savage manner in which the deceased was treated."

Sentence passed by the lower court.—To be imprisoned with labor in irons for the period of five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner has appealed, stating that he was ill-treated by the police and made to confess, and that he attested the confession before the magistrate through fear, ignorantly imagining that he should be punished if he repudiated it; but

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this plea, which was not urged at the trial, is in no way deserving of attention: indeed, the prisoner then admitted that he struck the deceased one blow in return for his having first struck him. The evidence of the surgeon shows that the deceased was most brutally assaulted. I see no reason to interfere with the conviction; but, allowing that provocation was offered to the prisoner, the case is an aggravated one, and called for, I think, a severer sentence. The appeal is rejected."

PRESENT:

J. R. COLVIN, ESQ., *Judge*.

MOKIM SHEIKH

versus

NAZIR MAMOOD SHEIKH (No. 1) AND OOZEER MAMOOD SHEIKH (No. 2).

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Sentence of seven years' imprisonment with labor, passed by the sessions court on a conviction of culpable homicide, upheld, the blow having been inflicted with a very heavy and dangerous weapon.

CRIME CHARGED.—Culpable homicide of Chowder Mamood Sheikh, brother of the plaintiff.

CRIME ESTABLISHED.—Culpable homicide of Chowder Mamood Sheikh, brother of the plaintiff.

Committing Officer, Mr. W. J. Longmore, joint magistrate of Magoorah.

Tried before Mr. R. Skinner, officiating sessions judge of Jessore, on the 10th November 1851.

Remarks by the sessions judge.—"From the evidence for the prosecution, it is proved that the prisoners were quarrelling with witness No. 2, when the deceased (a neighbour) interfered, and prisoner No. 2, ordered prisoner No. 1, to beat him; accordingly the said Nazir Mamood beat Chowder Mamood with a thick bamboo stake over the right temple, from the effects of which blow he fell senseless, and four days after died. This is also corroborated by the testimony of the native doctor, (who examined the corpse during the illness of the civil surgeon). The prisoners plead 'not guilty,' but they and their witnesses corroborated the fact of Chowder Mamood being wounded and dying from the effects of the wound. The witnesses for the defence do not disprove the guilt of the prisoners. The verdict of the law officer convicts the prisoners of the crime charged in the calendar. Deeming the crime of culpable homicide proved against the prisoners, I sentenced each of them to seven (7) years' imprisonment with labor."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin).—"I have considered this case, with the explanation

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given by the sessions judge in his letter* No. 15, of the 14th instant.

"The facts are well proved, and the blow is shown to have been with a very heavy and dangerous weapon.

"I see no ground for interfering with the convictions and sentences."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT,

versus

SONA HARI (No. 1), KOYLASH HARI (No. 2), KARTICK HARI (No. 3), ROOP CHAND HARI (No. 4), GOSSAIN DASS HARI (No. 5) AND GOPAUL ROY (No. 6).

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The sentence passed upon the prisoners affirmed by the Nizamut Adawlut, upon a conviction of going forth for the purpose of committing a dacoity.

CRIME CHARGED.—With being illegally assembled with intent to commit a dacoity, on the 26th August 1851, corresponding with 11th Bhadoon 1258 B. S.

CRIME ESTABLISHED.—Assembling for the purpose of committing a dacoity.

Committing Officer, Mr. C. T. Buckland, joint magistrate of Serampore.

Tried before Mr. C. Steer, officiating sessions judge of Hooghly, on the 13th November 1851.

Remarks by the officiating sessions judge.—"The prisoners were apprehended in the following manner: Manick, witness No. 1, chowkeedar of Chuck Dumneer, as he was going his rounds on the night of the 26th August, at about 10½ o'clock, proposed to himself to look in upon Nufferuddeen Meer, a

* *Extract paragraph 1, from a letter No. 15, dated 14th January last, from the Sessions Judge of Jessore to the Register of the Nizamut Adawlut.*

"Having yesterday evening received your letter No. 25, of 5th instant, I have the honor to forward, in compliance with the orders contained in paragraph 1, the proceedings connected with the commitment and trial of Nazir Mamood Sheikh and Oozeer Mahmood Sheikh; and at the same time to explain that, in awarding the punishment of seven (7) years, I was guided by the precedent afforded by Nizamut Adawlut Reports, volume II., page 187, in an analogous case. The weapon used was a deadly one,—a bamboo stake nine inches in circumference, four and half feet long. The blow, as described by the eye-witnesses and others who saw the wounded man afterwards, as well as by the defendants, was very severe. The native doctor's deposition shows that the forehead was fractured, and the brains were beaten in and clotted with blood."

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custom he was in the habit of doing several times in the night as the said Nufferuddeen is a notorious *budmash ;* when he got close to the house, he stood there some little time and heard several persons talking inside in whispers, on which, suspecting that the inmates were met on no good design, he was about to go back into the village to call two villagers, when Nuffer's dog set up a barking. This alarmed the persons in Nuffer's house, and they accordingly sallied out, some running one way, and some another. The chowkeedar followed one man, and with his *lattee* knocked him down, and his brother, Sumboo, the *paik* of the zemindar's cutcherry, coming up, on hearing the chowkeedar's cries for help, these two secured him. They did not know him at the time, but they learnt afterwards that he was Gopaul, the prisoner No. 6. Several of the villagers then came up, and he confessed before them, saying, that Nuffer had enticed him and others into his house, with the intention of going with them to commit a dacoity in the house of a Moosulman in Dolpoteepore, a village close by Chuck Dumneer.

" On the arrival of the darogah, Gopaul confessed before him to the above effect, and on the prisoners Nos. 1 to 5, being apprehended on his confession, they also admitted their guilt, one and all attributing the object of their meeting in Nuffer's house to an intended excursion into Dolpoteepore.

" These prisoners also made a like confession before the joint magistrate of Serampore. The two prisoners Nos. 4 and 6, confessed also, the former, to two other dacoities, and the latter to four others.

" The witness No. 19, corroborated the statement of the witness No. 1, his brother, in regard to the apprehension of the prisoner Gopaul, and the whole facts of the case support the truth of the account as related by the chief witness.

" Before the sessions all the prisoners denied.

" Prisoner No. 1, Sona Hari, pleaded in his defence that the jemadar of the thanna had ill-used him, and that he was made to confess, that the foujdaree confession was copied from the Mofussil one, and he names witnesses to prove that he was at his own house the whole of the night of the 26th August.

" Prisoner No. 2, Koylash Hari, makes a like defence, says that the darogah wrote what he liked, and that this so-called confession was copied again before the joint magistrate. He denies that he was in Nuffer's house at the time alleged, and he names witnesses to good character.

" Prisoner No. 3, Kartick Hari, made a similar defence, but named no witnesses.

" Prisoner No. 4, Roop Chand, denies having gone to Nuffer's house on the night of the 26th August, accounts for his Mofus-

sil and foujdaree confessions in the same way as the other prisoners, and names witnesses to prove that he was in his own house the whole of the night of the 26th August. This prisoner was before convicted of burglary and sentenced to three (3) years' imprisonment.

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"Prisoner No. 5, Gossain Dass Hari, denies having gone to Nuffer's house on the alleged night, says that he was told by the mohurir who apprehended him, that he had been named by Gopaul, whom he had never seen before, and that he was to confess. That he still made no confession to the darogah, but that the terrors of the *tunda* guard (a set of solitary cells appertaining to the jail of the joint magistrate at Serampore) made him invent some kind of confession in order to escape from it. He names two witnesses to say that he was apprehended in his own house by the mohurir.

"The above five prisoners all live round the same tank in the village of Meerpore, which is six miles from Chuck Dumneer, where Nuffer lives.

"The prisoner No. 6, Gopaul Roy, who was apprehended on the spot, denies his Mofussil and foujdaree confessions. His defence is that when he was a *paik* in Kishen Potdar's house, he contracted an illicit attachment to a woman by the name of Horo, the wife of Manick Chowkeedar's (witness No. 1,) uncle. This person he enticed away, and she has lived with the prisoner since, in Kalleegunge, zillah 24-Pergunnahs. In Bhadoon last, the son of Horo, Kishen Sirdar, who is also a chowkeedar of Chuck Dumneer, had a son born to him, and the prisoner and his woman Horo went to see him on that occasion. While there, on the night of the 26th August, at about 10½ o'clock he heard witness No. 1, Manick, Sumboo, witness No. 19, Kishen Sirdar, one Horo and Sooklal, all brothers, consulting how they might kill the prisoner. Hearing this he ran off, but they caught him, and trumped up the story about the assembly in Nuffer's house. He denies making any confession in the Mofussil, and says his foujdaree confession was made to escape from the treatment in the *tunda* guard. He names no witnesses on any point.

"In respect to the exculpatory evidence adduced by the prisoners, it is sufficient to say in a word, that it does in no degree prove that the prisoners were not assembled on the night in question in Nuffer's house.

"When a dacoity is meditated, it is seldom that the gang meet in any man's house, some secret and secluded place is generally chosen as the place of rendezvous. It is another curious feature in the present case, that the party met in the house of a man who was subject to the close and continual surveillance of the

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police. But both these facts may be accounted for in a satisfactory manner in two ways. It is not at all improbable that Nuffer himself, from some motive or other, after collecting the gang in his house, may have given the chowkeedar the hint, which brought him so opportunely to the house, or as Nuffer could not go away from home for any length of time, owing to the inquiries of the chowkeedar, he may have found that it was the only feasible plan of committing a dacoity, to collect the gang in his house. They would then be ready, as soon as the chowkeedar had made his inquiries, and turned his back, to sally out and commit dacoity, returning perhaps before the chowkeedar had time to pay a second visit. But, however this may be, it is satisfactorily established in my mind that the prisoners were assembled in Nuffer's house with the intention of committing a dacoity, and that they were then and there surprised, and that Gopaul was caught in his attempt to escape.

" As to the defence of the two prisoners, Nos. 5 and 6, Gossain Dass and Gopaul, who allege that they were induced to make some sort of confession before the joint magistrate of Serampore to escape from the *tunda* guard, there is no reason to think that any apprehension of that sort was the motive which induced them to confess. They had done so in the Mofussil, and they each repeated their respective statements on the same day that they arrived at the station. In respect, therefore, to the prisoner No. 5, Gossain Dass Hari, as he appears never to have been apprehended before, and is perhaps new to crime, was in all probability totally ignorant of such a place as the *tunda* guard when his confession was given. The prisoner No. 6, who is no novice in vice, having by his own account committed, within a short space, four other dacoities, had also not seen the *tunda* guard, though it is probable he may have heard of it from his evil associates, when his confession was delivered. I look, therefore, upon the plea of these prisoners as nothing more than an invention, to dispel, if possible, the unfavorable impression arising against them from their confessions.

" It is a bad practice, however, to confine persons in the *tunda* guard in ordinary cases; and I have noticed in a letter to the joint magistrate the ill effect of doing so in the case of two other prisoners, whose confessions I was obliged to set aside, as the prisoners, having been confined for some days previously in the *tunda* guard, I could not view their confessions, after such a treatment, as voluntary. Of the dacoities which the prisoners No. 4, Roop Chand, and No. 6, Gopaul, confessed to, it has been ascertained that three of them were actually committed and reported to the thanna at the time, and there is every reason, therefore, to think the prisoners have spoken the truth in stating

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that they were concerned in them. The prisoner No. 6, Gopaul, is evidently a rogue of the first water. He has made an ingenuous defence, but luckily for justice he has not had the means of proving it; so far from it, the report of the darogah in whose jurisdiction Taleegunge lies, shows that he never lived there; he appears, therefore, to be a vagabond, subsisting most likely by the fruits of his dacoities.

"The jury found the prisoners guilty, and in conformity to their finding, and my own convictions, Gopaul Roy and Roop Chand Hari, in consideration of their bad character, as deposed to by themselves, and as apparent from Roop Chand's former conviction, have been sentenced to seven (7) years each. Kartick, who was also in jail on a conviction of theft, to four (4) years, and Sona, Koylas and Gosain to three (3) years each, all with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The sessions judge has given a full and clear statement of the case. The pleas urged by the prisoners in their petition of appeal were considered by the sessions court and are in no way substantiated. All the prisoners live a long distance from the house where they assembled, and it is clear from their confessions, which have been duly proved, and are corroborated by the facts of the case, that they went forth from their own houses for the purpose of committing a dacoity, and were assembled in the dwelling place of Nuffer Meah for that purpose, when they were surprised, Gopaul being apprehended, and the rest escaping. I see no reason to interfere with the convictions and sentences passed by the sessions judge, further than to word the former in accordance with the act. I, therefore, convict the prisoners of going forth for the purpose of committing a dacoity, and confirming the sentences, reject the appeal."

PRESENT:

A. DICK, Esq., *Judge.*

BHOOBUN SIRKAR

versus

BAOREE DASS (No. 5), MOHOKUM (No. 6), BEEKROME (No. 7), HABLA (No. 8), THAKOOR DASS (No. 9), SOORUT (No 10), DHEER NYAH (No. 11), RADHANATH (No. 12,) KUMUL (No. 13), SURROOP (No. 14), GANGGOO (No. 15) AND RUTTUN (No. 16).

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Six prisoners released, there being no evidence against them except their alleged confessions before the police, and the first assistant, and those confessions being discrepant on a main point, and uncorroborated by any circumstances in the case, and the witnesses to them not examined with sufficient care.

CRIME CHARGED.—Prisoners, Nos. 5 to 12, dacoity with plundering property valued at rupees 28-13-6, attended with murder, and Nos. 13 to 15, privity to the above case, and No. 16 receiving the stolen property, valued at 4 annas, knowing the same to have been stolen and plundered in the above case.

Committing Officer, Captain G. N. Oakes, 1st class assistant agent Governor General, Manbhoom Division.

Tried before Major J. Hannyngton, deputy commissioner, Chota Nagpore, on the 17th December 1851.

Remarks by the deputy commissioner.—"The prosecutor states, that on the night of the 27th Assin, it was raining, when about midnight some fifteen or sixteen dacoits broke into his house, and began to beat him. Prosecutor then called to his house watchman, Binund, saying, 'Oh Binund, come, they 'are beatirg me,' but no answer was returned. Prosecutor then entreated the dacoits to let himself go and to take his property, on which they set him free, and he with his family went into the street and called on the villagers. Manik Rae, Surroop, thannadar, and others came, and when the dacoits went off, prosecutor returned to his house, and saw lying on the ground some half burnt rags and oil, which had served as a torch, and on searching for Binund, some traces of blood, and two arrows were found. On going to Binund's house, he was found lying wounded. Information was sent to the police, and before they arrived, Binund was dead. It was the prisoner Surroop who came when prosecutor called: Surroop did not give the watchman's call that night.

"The prisoners plead 'not guilty.'

"No. 1 witness, Mudhub Sirkar—Was present at the inquiry by the police officers. Proves the record of the inquest. After the dacoity, witness went to the prosecutor's house, and saw that the door was open, and there were traces of blood in the court-yard. There are one hundred and fifty houses in the village. The people did not assemble till the dacoits were gone.

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" No. 3 witness, Bhoirub Banerjea—Proves the record of the inquest.

" No. 4 witness Soorut Mahto, ... } —Prove the confessions before the police officers of the prisoners Nos. 5 to 12, inclusive.
" 5 " Laul Rajwar, ...
" 6 " Jeetoo Mahto,......

" No. 7 witness, Chumun Ram, ... } —Prove the confessions of the prisoners Nos. 5 to 10, inclusive.
" 8 " Buddee Oodin, ...

" The confession of the prisoner Baoree Dass is to the effect that he and others went and robbed the prosecutor's house, and that the watchman, Binund, having opposed them, the prisoner took an axe from the hands of the prisoner Mohokum, and therewith struck down the said Binund.

" The confessions of the prisoners Mohokum, Beekrome, Habla, and Thakoor Dass, are to the effect that they were present at, and concerned in, the robbery.

" The confession of the prisoner Soorut before the police is to the effect that he was concerned in the robbery, but before the principal assistant, he only says that he came to the prosecutor's house on hearing the noise, and was not concerned in the robbery.

" No. 9 witness, Lool Chootar—Proves the finding of a brass vessel in the house of the prisoner Mohokum, and of a small brass drinking cup in the house of the prisoner Ruttun.

" No. 10 witness Manik Baoree, ... } —These prove that the above articles are the property of the prosecutor.
" 11 " Radhae Koormee, ..
" 12 " Kurma Rajwar, ...

"The prisoners in their defence state as follows:—

" Prisoner Baoree Dass.—That his first confession was extorted by beating, and that his confession before the assistant, though not extorted, was still made under the terror of the former beating.

" Prisoner Mohokum.—That his first confession was extorted and that at the time of the murder, the prisoner was in his own house.

"Prisoner Beekrome.—That his first confession was extorted by Koonjul Singh Burkundauz, and if prisoner had committed the dacoity, it is not probable that he would have attended on Binund as he did.*

" Prisoner Habla has no defence.

* The original expression '*senk tap*' cannot be briefly translated. When a person is badly wounded the invariable treatment is to place him on a small cot, under which a charcoal fire is put, and oil is then rubbed over the body. This operation is '*senk tap*'.

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"Prisoner Thakoor Dass.—That his first confession was extorted, and that at the time of murder he was in his own house.

"Prisoner Soorut.—That his first confession was extorted, and that at the time of the murder he was in Garahphoosroo village.

"Prisoner Dheer.—That his confession was extorted, and that at the time of the murder he was in his own house.

"Prisoner Radhanath.—That he made no confession; that Nital Digwar beat him, and that at the time of the murder he was at Balrampore village.

"Prisoner Kumul Moochee.—Did not know that there would be a dacoity, but there was a report in the village that there would be a dacoity, therefore prisoner, three days previously, told this to Surroop. There was fear in the village. Saw four persons in Ganggoo's house; did not know them; now they are prisoners.

"Prisoner Surroop.—Did not know there would be a dacoity. Four men came to Ganggoo's house, and on inquiry, prisoner learned that they were Ganggoo's relatives, and often came there. Of these Soorut and Habla and Thakoor Dass are present. Prem is not present.

"Prisoner Ganggoo has no defence.

"Prisoner Ruttun.—The small brass cup is her own property.

"For the defence of the prisoner Mohokum—

"No. 13, witness Nuffer Moochee—Knows nothing.

"For the defence of the prisoner Beckrome—

"No. 14, witness Ruttoo Rajwar—Knows nothing.

"For the defence of the prisoner Thakoor Dass—

"No. 15,	witness	Lukhun Rajwar, ..	—Know nothing.
" 17	"	Nila Bhoomy, ...	
" 18	"	Prem Singh, ...	
" 19	"	Soojun Singh, ...	

"For the defence of the prisoner Soorut—

"No. 17,	witness	Nila Bhoonij, ...	—Know nothing.
" 23	"	Chyn Bhoonij, ...	

"For the defence of the prisoners Dheer and Radhanath—

"No. 24,	witness	Thakoor Mahto, ...	—These state that the prisoners were beaten by Koonjul Singh Burkundauz and Nihul Digwar in the dusk of the evening. The witnesses
" 25	"	Ramhuri Baoree, ...	
" 26	"	Sooful Bhoonij, ...	
" 27	"	Dhunnoo Chowkeedar,	
" 28	"	Gohiram Mahto, ...	
" 29	"	Anund Mundul, ...	
" 30	"	Kulyan Mahto.	

do not state the cause of the beating.

"For the defence of the prisoner Radhanath—

"No. 31,	witness	Roop Behara, ...	—These state, that on the 20th Assin, the prisoner was at a
" 32	"	Dhunnoo Thannadar,	
" 33	"	Dookhoo Nya, ...	

village, a mile from the scene of the dacoity.

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" For the defence of the prisoner Ruttun—

" No. 34,	witness	Bikaree Mahto,....	—These prove that a small brass cup is the property of the prisoner.
„ 36	„	Nila Bhoonij, ...	
„ 37	„	Redy Napit, ...	

" For the defence of the prisoner Soorut—

" No. 21, witness Panchoo Nya.—On the day after the *bijai* festival in Assin the prisoner was in Bhoonij's house.

" No. 22, witness Poostum Bhoonij.—Three days after the *bijai* festival in Assin, the prisoner was in witness's house.

Dolegobind Ghose, *mooktear.*
Jogunmohun Chowdry, *mooktear.*

" The jury, whose names and occupations are entered in the margin, find all the prisoners guilty, as charged.

" It does not very clearly appear how the prisoners were first suspected. The police officer reported that he and Koonjul Singh Burkundauz had, by various means, traced the brothers Beekrome and Mohokum (who are the sons of the prisoner Ganggoo) and others. It seems highly probable, that the prisoner Surroop, had, as even in his defence he asserts, seen some of the prisoners at Ganggoo's house, and that this led to their apprehension; but beyond the confessions of the prisoners, there is no legal proof whatsoever against them. However, I find no reason to doubt that the confessions of the prisoners Nos. 5 to 10, namely, Baoree Dass, Mohokum, Beekrome, Habla, Thakoordass and Soorut, are *bonâ fide* confessions. The confessions of the prisoners Dheer and Radhanath before the police officers were taken two days later than the others, and the evidence adduced by the prisoners certainly brings suspicion on those confessions. Against the remaining prisoners, I find no sufficient proof. It seems incredible that the prisoner Baoree Dass would deliberately, as he has done, confess having himself committed the murder, if it were not true that he did commit the murder. This prisoner is justly liable to sentence of death, but it is, I think, sufficient to recommend that the prisoners Baoree Dass No. 5, Mohokum No. 6, Beekrome No. 7, Habla No. 8, Thakoordass No. 9 and Soorut No. 10, be sentenced to imprisonment in transportation for life. The other prisoners have been acquitted and discharged."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) —" The first observation to be made in this case is, that twelve persons have been apprehended, and what led to their apprehension is totally unknown. The prosecutor recognized no one; suspected no one; and those first apprehended were never before suspected, or ever apprehended for any crime. Out of the twelve, eight are alleged to have confessed before the police, and six of those eight before the first assistant; but there is nothing

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corroborative of the truth of those confessions, except the alleged giving up of two or three trifling articles, of value 8 annas. Such is the whole result of recovery of the plunder, after eight confessions; and there is no other proof of any kind against the prisoners. The twelve are all committed to the sessions, and the jury convict all. The deputy commissioner, however, acquits four for want of sufficient proof, and two more because he suspects the genuineness of their confessions, from the evidence of maltreatment to extort them, brought by those prisoners; and convicts six, finding no reason to doubt that their confessions 'are *bonâ fide*,' and recommends sentence of transportation for life against all six, noting that prisoner Baoree Dass, No. 5, was justly liable to sentence of death.

2. "The second observation relates to the *infliction* of the wound on the deceased Binund Chowkeedar. There is a remarkable discrepancy in the confessions of Baoree Dass No. 5, and of Mohokum No. 6, before the police. Baoree says, that he took the axe from the hand of Mohokum, and struck down Binund; Mohokum says, that Baoree had the axe in his own hand, and struck down Binund; and in this, he is corroborated by all the other confessions given before the police. Before the first assistant, Mohokum first says, that he was not present when Baoree struck down Binund, and did not see it, as he was in the house. He afterwards, in reply to a question, says, that the axe is his, and that Baoree took it from him, and struck down Binund. On this point, the confessions of the other prisoners before the first assistant are very contradictory.

3. "The third observation refers to the *appearance* of the wound inflicted on Binund, and its *severity*. The prosecutor in his first deposition to the police, says, he went immediately after the dacoity to see Binund at his own house, and found him wounded on the head with a *club*, that he was senseless and could not speak. The inquest on the body held by the police, makes the wound a severe *cut*, in length three fingers' thickness, in width, one finger, and in depth, apparently four and half fingers. But the civil surgeon who examined the body writes, that it was 'a simple incised wound on the head, which did not reach 'the skull, and could hardly have caused his death.' And, what is exceedingly material in such a case, he adds, 'it may have 'been produced after death.' The court regret extremely, that the surgeon was not examined on oath, either before the first assistant or the deputy commissioner, and carefully questioned on this most important point.

4. "The fourth observation has respect to the meagreness of the examinations of the witnesses to the confessions before the police, taken before the first assistant; and of the witnesses to the confessions before the first assistant, taken before the deputy

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commissioner and the jury at the trial. Not a single searching question is put. These examinations should be close, full, and complete, so as to leave no doubt in the mind of the judge, that the confessions were taken with every precaution to insure their being perfectly voluntary; that every word in them was spoken by the party confessing; and that they were accurately recorded. This is a duty doubly incumbent on the presiding officer, when there is no other evidence in the case; and when some, who confessed before the police, have retracted, and charged the police with having extorted them by maltreatment, and produced evidence sufficient to raise suspicion of foul play, if not conviction.

"The court, therefore, can place no confidence on the confessions, as being true and voluntary; and entertain strong suspicion of foul proceedings on the part of the police, especially with advertence to the opinion given by the civil surgeon, and the remarkable discrepancy in the confessions on the main point in the case. The prisoners Baoree Dass No. 5, Mohokum No. 6, Beekrome No. 7, Habla No. 8, Thakoor Dass No. 9 and Soorut No. 10, are acquitted, and are to be released forthwith.

PRESENT:

R. H. MYTTON, Esq. *Officiating Judge.*

GOVERNMENT

versus

KHOOSDIL SINGH (No. 2), UKLOO (No. 3), JOOGUN ALIAS JUGGUN (No. 4), DOOKHUN SINGH (No. 5), CHYN RAE (No. 6), DATARAM RAE (No. 7), PEM RAE (No. 14), JUNGUL RAE (No. 15), MUNGUL RAE (No. 16), ASSOO RAE (No. 17) AND NYN RAE (No. 18).

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In a case of affray with culpable homicide, certain prisoners acquitted on account of incredibility of the evidence.

Crime Charged.—Affray attended with culpable homicide, in which dispute, Deena Jolaha was killed on the spot, and Dassoo Toory, died six days subsequently from the effects of a wound therein.

Crime Established.—Affray attended with culpable homicide, in which dispute Deena Jolaha was killed on the spot, and Dassoo Toory, died six days subsequently from the effects of a wound therein.

Committing Officer, Captain T. Simpson, principal assistant, Hazareebagh.

Tried before Major J. Hannyngton, deputy commissioner of Chota Nagpore, on the 3rd November 1851.

Remarks by the deputy commissioner.—"It appeared in this case, that a piece of land adjacent to the villages of Pokhoriah in Gadee Burkutta and Mohespore of Gadee Leda in Ramgurh, is

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claimed by the owners of those Gadees respectively, and has for a long time been in dispute. On the 15th June last, a considerable body of men, in all probability not less than one hundred men on each side, met on this ground, and had a very serious encounter,—one man named Deena on the Pokhoriah side, having, it is alleged, been killed on the spot, and one man named Dassoo, on the Leda side, received a blow on the head, which fractured his skull, so that he died on the fourth day following. The evidence on both sides was conflicting, and the police officers were extremely remiss in regard to the first inquiry. The following is a concise summary of the evidence. The evidence of the prosecutor Gones, and of the witnesses Laloo, Kisna, Bodhee, Jykishen, Churamun and Gholam Alee, is, that the prisoners, Khoosdil Singh and Nyn Rae, were present at, and actively engaged in, the affray. To rebut this the prisoners have each produced two witnesses to an *alibi*, the evidence to which is, I think, over-borne by the former. The prisoners Ukloo, Juggun, Dookhun, Chyn and Dataram, admit that they were present, and the witnesses above-named prove that Chyn was actively engaged in the fray, Ukloo, Juggun, Dookhun and Dataram, were themselves beaten. There is evidence of witnesses also to prove, that they were present, but there is no proof that they used actual violence towards any one. Pem Rae and Jungul Rae admit being present, and their presence is proved by witnesses, but it is not proved that they used violence. Mungul Rae is proved to have been present by the evidence of Kisna and Jykishen, and that Assoo Rae was present, is proved by these, and by the witness Churamun, but it is not proved that these used violence. Against Dhurmonarain, Brijlol, Moninath, Chunilal, Odo Rae and Bucktowar, I do not find sufficient proof and I concur with the jury in acquitting them. There is no doubt but that Dassoo Rae was killed in this affray, and that Deena Jolaha was also killed seems very probable, though I do not think it is sufficiently proved. The inquest on the body was very unsatisfactory, and of three witnesses thereto, not one could say that the body before them was Deena's. The jury found Khoosdil Singh and Nyn Rae 'not guilty,' and the others, excepting as above, guilty. On the grounds above set forth, I considered it sufficiently proved, that Khoosdil Singh and Nyn Rae, were both actively engaged in the affray, and I therefore convicted these two against, and the others in concurrence with, the opinion of the jury. The prisoners were sentenced as shown."

Sentence passed by the lower court.—Prisoners Nos. 2, 6 and 18, to imprisonment with labor and irons, for ten (10) years each, and prisoners Nos. 3, 4, 5, 7, 14, 15, 16 and 17, to be imprisoned with labor and irons, for five (5) years each.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The evidence for the prosecution in this case is, as observed by the deputy commissioner, conflicting. It is for other reasons most unsatisfactory. The eye-witnesses are residents of distant villages, and the prisoners were, with few exceptions, personally unknown to them. Nevertheless, they, the witnesses, pretend to have been able to distinguish the particular acts which each individual did in the rencontre. Their ability to do this is most improbable.

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"From the darogah's report of 20th June, it appears that Dassoo and Assoo, on the part of Tickut Govind Narain Singh, appeared at the thanna with slight wounds on the 16th June, the day after the affray. Dassoo survived four days; but it does not appear that his deposition was taken at all. The earliest information against Khoosdil and his party which I can find on the record is the deposition of Assoo, taken on 26th June, *i. e.*, eleven days after the affray. A charge brought at so late a stage, when supported by such unsatisfactory evidence, is not deserving of credit.

"The only persons in this case whom I think it just to convict, are those who admit having been present at the occurrence. The others, *viz.*, Khoosdil Singh, Mungul Rae and Nyn Rae, are therefore acquitted, and I direct their release."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

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Case of KURREEM BUX MOONSHEE.

The sentence of the sessions judge passed upon the conviction of the prisoner of wounding with the intent to murder, affirmed by the Nizamut Adawlut. The court remark that the circumstances of the case justified a severer sentence.

GOVERNMENT

versus

KURREEM BUX MOONSHEE.

CRIME CHARGED.—Having, on the night of the 23rd May 1851, corresponding with the 10th of Jeyt 1258, wounded Rutee Pramanick on the neck with a sword, with intent to murder the said Rutee Pramanick.

CRIME ESTABLISHED.—Wounding with intent to murder.

Committing Officer, Mr. R. P. Harrison, joint magistrate of Bograh.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 15th August 1851.

Remarks by the sessions judge.—"From the statement of the prosecutor (on the part of Government) and the evidence adduced, it was proved that, about 12 o'clock on the night of the 23rd of May last, (corresponding with the 10th Jeyt 1258 B. S.,) as eye-witnesses to the fact Nos. 1 and 2 of the calendar, man and wife, were in bed asleep, the prisoner attempted to take away the life of the former (witness No. 1) with a sword, by inflicting a wound from the back of the right side of the neck

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towards the throat (as he was lying on his left side), which bled profusely, dividing the integument and a small vein; when the wounded man awaking, laid hold of the sword, calling out to his brother, outside, for help, naming the prisoner as killing him, which awoke his wife, lying by his side, who also recognized the prisoner. After a scuffle for the sword, prisoner resigned its hold (probably from witness having heard a voice which resembled that of the prisoner's brother, calling out to him, (prisoner,) by name to come out as his, (witness') brother had come out of his room, which was seemingly not the case) and escaped through the door fastened by a *jhamp*, which he undid on the inside, throwing the *jhamp* on the prosecutor in his bed.

"Though there was no light in the room, witnesses Nos. 1 and 2 positively swear to having recognized (it being a clear night) the prisoner by the light from without which came in through a small window of the room. The moon would appear to have been slightly rising at the time too.

"The supposed cause of crime is attributable to witness No. 1, having married witness No. 2, who had some time before *been the wife of the prisoner*, whom he had neglected and turned out of doors, and who, after being released by the joint magistrate, married witness No. 2, and the prisoner had threatened her to be the death of any one who married her.

"The medical officer deposed that he had found an incised wound on the neck, on the right side of witness No. 1, about five inches long, dividing the integuments and a small vein, also a small incised wound, about an inch and a half in length, on the back of the right hand (stated by witness No. 1 to have arisen from the sword having passed over it, as well as his neck, while partly lying over his neck and face in sleep,) and a very slight wound on the left wrist, supposed to have arisen from coming in contact somehow with the sword in the dark.

"Witness No. 1 knew the prisoner well before the event, as his house adjoined that of his wife's father, when the prisoner and his then wife lived with him, (father.) It was doubtful whether the sword was the prisoner's—some witnesses said it was like one he had, others said, they had never seen him with a sword.

"The prisoner in his defence resorted to *alibi*, which he could not establish.

"The jury found the prisoner guilty, in whose verdict I concurred."

Sentence passed by the lower court.—Imprisonment with labor and irons for nine (9) years.

Remarks by the Nizamut Adawlut:—(Present: Mr. A. J. M. Mills.)—"The prisoner has appealed. The prisoner's guilt turns upon the weight to be attached to the evidence of the two eye-witnesses, the wounded man and his wife. The sessions

judge and the jury, who have heard the evidence given and have had the advantage of drawing their conclusions from the demeanor of the witnesses as well as from their words, convict the prisoner. There is nothing in the objections urged by the prisoner to shake the evidence, and the circumstance of the prisoner having threatened to revenge himself upon the prosecutor because he had married his discarded wife, tends greatly to support it. I concur, therefore, in the conviction of the prisoner, and reject the appeal, but I think the facts of the case justified a severer sentence."

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Case of KURREEM BUX MOONSHEE.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

A. J. M. MILLS, Esq., *Officiating Judge.*

MUSST. BHOOKLY

versus

LEETA.

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Case of LEETA.

Capital sentence passed on a prisoner, who went, armed with an axe, to commit theft, and on being detected and pursued, turned on the owner of the house, struck him down from behind with the axe, and killed him. The court could find no ground for mitigation of the sentence to transportation for life, as suggested by the deputy commissioner in Chota Nagpore.

CRIME CHARGED.—Attempt at theft with wilful murder of Thootha, husband of the prosecutrix.

Committing Officer, Captain W. H. Oakes, principal assistant Governor General, Lohurduggah Division.

Tried before Major J. Hannyngton, deputy commissioner Chota Nagpore, on the 12th January 1852.

Remarks by the deputy commissioner.—"The prosecutrix states that she and her husband and family were sleeping at night, when a thief entered the house, and seized a fowl, which made a noise and awoke her husband, who went after the thief, accompanied by Jethooa. Her husband attempted to seize the thief, who then struck him with an axe, so that he died instantly. Jethooa made outcry that a thief had killed Thootha, and then Jethooa and Sookta apprehended the thief. The prisoner is a fellow villager, and never had any quarrel with deceased. Prosecutrix saw the thief in the house, and recognized him. She did not see him, but her husband did.

"The prisoner pleads 'guilty.'

"No. 1, witness Jethooa.—On a Saturday, in Kartik, at midnight, Thootha cried out theives, whereupon witness, unarmed, and Sookta ran out, and having gone about eight paces saw the prisoner Leeta strike Thootha with an axe, only one blow on the back of the neck, so that he fell down and died instantly. Witness saw the blow given, and immediately took the prisoner in custody. All the villagers came at the outcry, and the prisoner was that very night taken to the police station at Ranchee. The villagers came also. The prisoner when apprehended confessed the crime.

1852. There had not been any ill-will between the prisoner and the deceased. The prisoner is a good man; witness does not know

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Case of LEETA. time. It was a dark night. The deceased had a staff which fell when he was wounded. The prisoner, when confessing, said that deceased struck him three blows.

"No. 2, witness Sookta—Corroborates the preceding statement, but did not see the blow given.

"No. 3, witness Narain,....
" 5, " Seebun, ..
" 6, " Ramsahy,..
—Prove the record of the inquest, and the confession of the prisoner before the police officer.

"No. 7, witness Boodhooram—Native doctor, inspected the body of the deceased. There was only one wound, as of an axe or of a sword, on the right side of the neck, which was cut almost entirely through, only a small portion of flesh and skin remaining unsevered. The spine was cut through.

"No. 8, witness Sheikh Budhoo—Proves the confessions of the prisoner before the principal assistant.

"The prisoner's confessions were to the effect that he went at midnight to commit theft in the house of the deceased; that the deceased discovered, pursued and struck him three blows, whereupon the prisoner killed him with an axe.

"No. 10, witness Ram Pahan, ..
" 11, " Gooroon, ...
" 12, " Pandoo,......
" 13, " Randsay, ...
—These witnesses state that at midnight they heard an alarm, and on going out saw the deceased lying dead and prisoner in custody.

"No. 14, witness Koila.—Knows nothing.

"No. 15, witness Tanka.—As Ram Pahan and others.

"The prisoner makes no defence; he went to steal, and killed the deceased.

Ukori Emrit Lall, *mooktear.* ...
Lalla Gujraj Singh, *mooktear.*

"The jury, whose names and occupations are entered in the margin, find the prisoner guilty of wilful murder.

"The guilt of the prisoner is proved by direct evidence of witnesses, and by his own confession. His crime is technically that of wilful murder, for he went to the house of the deceased armed, and with felonious intent. But it is clear that the murder was not premeditated, for when discovered, the prisoner ran away, and only used his weapon when he was closely pursued; therefore, concurring in the verdict of the jury, I yet consider that the law will be vindicated by a sentence of imprisonment for life, in transportation beyond sea, with hard labor in irons, which sentence I accordingly recommend to be passed on the prisoner."

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.)—"The prisoner went, *armed with an axe*, to commit theft, and when detected and pursued, and, as he states, thrice struck at by the owner of the house with a view to apprehend him, he turned round, and, as the owner then, seeing the axe, fled from it, he struck him *from behind*, and nearly cut his neck through;—see his confession before the magistrate, and the deposition of the native doctor before the magistrate of November 11th. We cannot, under such circumstances, find ground for any mitigation of the sentence, such as is suggested by the deputy commissioner, and we accordingly sentence the prisoner Seeta to suffer death."

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Case of LEETA.

PRESENT:

J. R. COLVIN, Esq., *Judge*.

GOVERNMENT

versus

ALLUM MUNDUL.

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Case of ALLUM MUNDUL.

Prisoner convicted of aggravated culpable homicide, and sentenced, upon the precedents of the court, to imprisonment for fourteen years, with labor and irons.

CRIME CHARGED.—1st count, wilful murder of Towaj Mundul; 2nd count, culpable homicide of Towaj Mundul.

Committing Officer, Mr. C. F. Montresor, magistrate of zillah Nuddea.

Tried before Mr. J. C. Brown, sessions judge of zillah Nuddea, on the 20th December 1851.

Remarks by the sessions judge.—"The whole of this case can be comprized in a few words. The deceased and the prisoner were cousins, and had a dispute regarding the trespass of the cattle of the former on the lands of the latter. The prisoner had the *lattee*, which measures nearly six feet in length, five and a half inches thick at one end, and four and a half at the other, and weighs twelve and a half chittacks, or sixty-two *tolahs*, in his hand, and after some words he proceeded to blows, one of which is sworn to have been inflicted on the head, which depressed the skull, another on the back of the neck, and the third on the back. Towaj Mundul lingered through the night, and died, within twelve hours of receiving the injury, from its effects.

"The *futwa* of the law officer of this court convicts the prisoner of the crime of wilful murder, and declares him liable to *kissas*.

"I am of opinion that there is a want of proof of '*malice* '*prepense*' against the prisoner, to warrant the infliction of capital punishment.

"It is true that the *lattee* was a dangerous instrument from its size, when used, as it was by the prisoner, but it was no larger

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Case of ALLUM MUNDUL.

than is generally made use of by the lower orders, especially by those who have to guard their crops, &c. It so happened that the prisoner had it in his hand, and being exasperated by something the deceased said at the moment, inflicted the blows which ultimately caused death. I consider the crime of 'highly culpa-'ble homicide' to have been proved against the prisoner, and am of opinion that the ends of justice would be amply answered by his being sentenced to transportation beyond sea for life."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"The guilt of the prisoner is clearly established. His defence is supported merely by two of his own relatives, and its tenor was only referred to by the prisoner after his commitment, on the 18th November,—no allusion to it, or to these witnesses, having been made by the prisoner in his answer before the magistrate of October 9th.

"The case is one of aggravated culpable homicide, three or more blows having been inflicted by the prisoner. According to the precedents of the court, a sentence of imprisonment for fourteen (14) years with labor and irons will be appropriate for the crime, and I award it accordingly.

"It must be noticed that, though the facts are, in this instance, sufficiently proved by other evidence, it was irregular and erroneous in the sessions judge not to record the statements of the assistant surgeon (who examined the corpse) in detail on the trial, and the more so, as, in this case, the letter of the assistant surgeon to the magistrate of October 9th, or his deposition before the magistrate of November 18th, gave no particulars as to the several wounds."

PRESENT:

A. DICK, ESQ., *Judge.*

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Case of OTTUM BAGDEE CHOWKEEDAR.

Sentence confirmed, there being no ground for appeal, and the evidence against prisoner conclusive.

SHEIKH PUNNAHOOLLAH

versus

SREEDHUR TOOTEY KYBURTO, ALIAS SREERAM, ALIAS KORARAM BAGDEE (No. 1), BUNGSHEE DHARA PUNDIT (No. 2), OTTUM BAGDEE, CHOWKEEDAR (No. 3, APPELLANT,) AND KASSEE ROY BAGDEE (No. 4.)

CRIME CHARGED.—Committing a dacoity attended with wounding in the house of the prosecutor, on the night of the 26th July 1851, corresponding with 11th Sawun 1258 B. S., and plundering therefrom property to the amount of rupees 1,453-3-6.

CRIME ESTABLISHED.—Dacoity attended with slight wounding.

Committing Officer, Baboo Issur Chunder Ghosal, deputy magistrate of Jahanabad.

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Case of OTTUM BAGDEE CHOWKEEDAR.

Tried before Mr. C. Steer, sessions judge of Hooghly, on the 14th November 1851.

Remarks by the sessions judge.—"The house of the prosecutor in Jaie Singh Chuck, was attacked by a gang of dacoits in the middle of the night of the 26th July last. Twelve men slept that night in his house or about his premises, of these, witness No. 3, the village chowkeedar, and witnesses Nos. 4 and 5, Muddun Bagdee and Guddadhur Bagdee, were caught by the dacoits and tied up. The rest of the household made their escape.

"The prosecutor himself ran out by a door leading to the south, and raised the villagers in that direction, while his brother, Noimuddin, witness No. 1, did the same with the villagers living to the north. Two forces were thus collected, one on the north and the other on the south of the prosecutor's house, and their numbers were quite enough, if their courage had been equal, to have made short work of the dacoits. They judged it prudent, however, to let the dacoits leave the house, and then the two forces uniting, gave chase. The witness, No. 3, was wounded while so engaged, and disabled, but the rest of the villagers succeeded in knocking over two of the dacoits. Prisoners Nos. 1 and 2, and their gang then separated; some fled one way, and some another, and the villagers gave up the chase.

"The prisoners Ottum, No. 3, and Kassee, No. 4, were also recognised by the three witnesses, who had been tied up by the dacoits, and by the prosecutor and his brother, Noimuddin. Ottum and Kassee were also named in both the confessions of the captured dacoits.

"Koraram Bagdee, prisoner No. 1, who first called himself Sreedhur, inhabitant of Bykuntpore and then Sreeram, and who, after a great deal of difficulty, the darogah ascertained to be Koraram of Neemdunga, confessed before the police and before the magistrate, and among others he named as his accomplices the prisoners Bungshee, Ottum and Kassee.

"Bungshee made a similar confession, and named as his associates, Koraram, Ottum and Kassee.

"Ottum and Kassee both denied, and the prisoners Koraram and Kassee also retracted their confessions when called upon for their defence at the sessions.

"Prisoner No. 1, Koraram's defence is—That he was going to his relative's house in Sooragachee to get rice to transplant, and was caught by a Mussulman at 5 o'clock in the morning on Matpoor *māt*, north of Jaie Singh Chuck; that he met, while going for the plants, one Prame Chand Bagdee, to whom he told the business he was going upon. He names this person as

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his witness to this fact, and names two others as witnesses to good character.

"Prisoner No. 2, Bungshee, pleads that he passed the night of the 11th Sawun in the house of one Petamber in Satmasa; that he left early the next morning and was apprehended on the road. He names Petamber and Jetu as his witnesses to this fact, and he names witnesses to character.

"Prisoner No. 3, Ottum's defence is—That he and the prosecutor's witnesses have had frequent disputes about the fish of a tank on the banks of which the witnesses reside, that they steal his fish. The prisoner has two causes of quarrel with the prosecutor. He once cut down a *peepul* tree belonging to the prisoner, and the prisoner one day caught the prosecutor in the house of a Bagdee woman and exposed him. He pleads further that he was in his own village the whole of the night of the 11th Sawun.

"Prisoner No. 4, Kassee, father-in-law of Ottum, makes a similar defence to that of his son-in-law, and names witnesses that he was at his own house while the dacoity was going on.

"Of Koraram's witnesses, his brother, witness No. 25, says, Koraram is a good man; witness No. 26 is absent, and witness No. 27, Prame Chand says, that he did not meet the prisoner any where on the morning of the 12th Sawun.

"Bungshee's witnesses to character say, he has recently taken up his residence in their village and they are not able to speak, therefore, of his character. The witnesses to his leaving the house of Petamber, early on the 12th Sawun, depose that he did nothing of the sort.

"Three witnesses of Ottum say that they were woke up by him at various times during the night of the 11th Sawun. This is very possible, and yet Ottum may have been in the dacoity, as his *chowkee* is only half a coss from the prosecutor's house. A burkundauz, whom Ottum names to prove that he saw him on his *chowkee* on the night of the 11th Sawun, says, that he never went into Ottum's village at all that night.

"Kassee's two witnesses, one his relation, and the other a villager, depose that they saw Kassee in his own house while the dacoity was going on, but I discredit their evidence, as he could not have been at two places at the same time, and it is proved by the clearest testimony that he was one of the dacoits in company with the two prisoners who were captured close to the spot.

"Regarding the evidence and proof complete against all four prisoners, Ottum as being a chowkeedar at the time was sentenced to ten (10) years, and the other three to eight (8) years each, the charge established being dacoity with slight wounding.

"Two other prisoners were released."

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Remarks by the Nizamut Adawlut.—(Present: Mr A. Dick).—"The prosecutor on the very next day, in his first deposition, stated that he had recognised the prisoner, as had his brother, and the three witnesses who had been tied by the dacoits. The prisoner before the police, and in his answer to the deputy magistrate, assigned no ground of enmity on the part of prosecutor and his witnesses for accusing him, as he did at the sessions; and in his appeal he has given no reason for appealing.

"The court see no cause for interference with the sentence passed on him."

PRESENT:

A. DICK, ESQ., *Judge.*

INDRONARAIN MUNDUL

GOPAL BAGDEE (No. 1), DINONATH HOLDAR (No. 3) AND UBHEERAM ALIAS RUBEERAM BAGDEE (No. 4).

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Case of GOPAL BAGDEE and others.

Prisoners acquitted, notwithstanding they confessed before the police and the magistrate, because there was no corroborative evidence, and no searching question put to the witnesses to the confessions, to ascertain that they had been duly taken, and recorded, as often strictly enjoined in Circular Orders of the Nizamut Adawlut.

CRIME CHARGED.—1st count, dacoity in the prosecutor's house and plunder of property to the amount of rupees 2,853-2-0; 2nd count, being accomplices in ditto; 3rd count, being accessaries to ditto, both before and after its perpetration; and 4th count, prisoner No. 3 is further charged with receiving and possessing portions of the property aforesaid, knowing them to have been such.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. W. H. Elliott, magistrate of the 24-Pergunnahs.

Tried before Mr. H. T. Raikes, sessions judge of the 24-Pergunnahs, on the 1st November 1851.

Remarks by the sessions judge.—"Some very vague information was first conveyed to the police of a dacoity having been committed, in which certain parties were implicated, some of them were *arrested*, and on the confession of a man named Oomachurn, the three prisoners were apprehended and confessed to the darogah, repeating their confessions on the following day to the magistrate, and Dinonath (No. 3,) also gave up some pice and rupees 9, which he admitted were the proceeds of the robbery. Two other confessing prisoners were made approvers in the case, but save by the confessions of the prisoners themselves the testimony of the approvers was in no way corroborated. Their release appears to me to have been entirely useless. I convicted the prisoners of dacoity as charged on their own confes-

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sions, though they pleaded 'not guilty' before this court. The prisoner No. 2, (since dead,) was prevented by illness from standing his trial."

Sentence passed by the lower court.—Each to be imprisoned for the period of fourteen (14) years with labor and irons from the 1st November 1851.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) —"It is admitted by the sessions judge that there is no evidence in this case, none corroborative even of the confessions of the prisoners. The three convicted prisoners, petitioners, were never before suspected, or apprehended; and several others, who are said to have confessed like them before the police, but who denied before the magistrate, have been released. One of them, Nepal, often apprehended in cases of dacoity. The witnesses to the confessions were not asked a single searching question to ascertain whether these three prisoners were heard singly when confessing, whether they *spoke* what was written down, and whether every word they did speak, was accurately recorded.

"It is further to be observed that two of these three, if the confessions of themselves and of others are to be believed, were merely coolies taken by the real dacoits to carry the plunder.

"None of the leaders has been convicted, and none of the plunder (worth noticing) recovered, out of rupees 2,800 worth taken away. The story too of the informer, Brijmohun Day, who caused the apprehension of the prisoners, as well as the depositions of the pardoned accomplice, Oomachurn, is utterly unworthy a moment's credit. The first would have it believed that an old leader of dacoits would divulge every particular of a dacoity, even to naming all the dacoits, to his mistress, and that she would tell it to him off hand. The other would make it appear that he went merely to note down how each dacoit was employed.

"The court, not satisfied with the evidence against the prisoners, acquit them, and order their immediate release.

"The rupees found on No. 3 to be returned to him."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

HUNSRAJ SURAUGEE.

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Case of HUNSRAJ SURAUGEE.

Held, that three years' imprisonment is an inadequate sentence, on conviction of forgery and knowingly filing a forged bond, for the purpose of robbery or extortion.

CRIME CHARGED.—1st count, with having forged a document (*tumussook*) for rupees 300, against the name of Juggernath Bukshee; 2nd count, with having uttered the said document, knowing the same to have been forged.

CRIME ESTABLISHED.—Forging a bond, and uttering the same, knowing it to have been forged.

Committing Officer, Mr. T. C. Loch, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 20th November 1851.

Remarks by the sessions judge.—"The prisoner is charged on two counts, 1st, with having forged a bond for rupees 300, against the name of Juggernath Bukshee; and 2ndly, with having uttered the same, knowing it to have been forged.

"The facts of the case are as follow:—

"On the 11th September 1845, a plaint was filed on the part of Foollo Bebee, in the sudder ameen's court of this district, against the heirs of Juggernath Bukshee, for the recovery of rupees 625 alleged to be due on a bond, executed 15th Assin 1244, which, after putting his signature to the back of it, the prisoner filed on the 26th August 1846, through her pleaders, but the *mooktear,* on the part of the heirs of Juggernath Bukshee, stating that the said Juggernath Bukshee was at Manbhoom, far from this district, when the debt was said to be contracted, and the bond forged, the sudder ameen, Sibchunder Mookerjee, after instituting proper inquiries, dismissed the plaint and forwarded the records of the case to the judge for his orders regarding the forgery, giving his opinion that the document in question was forged by the prisoner. The case was pending from the time of my predecessor, who ordered the prisoner to give bail to the amount of rupees 500. On the 15th of July last, the prisoner was made over to the magistrate, who committed him to the sessions to take his trial. The prisoner denied the charge, and alleged in his defence that Foollo Bebee was his tenant for twenty years, and that she returned to her native country two years ago, having in her own presence appointed the pleaders for the above cause; that she gave him the bond to get filed; that the sudder ameen charged him with forgery, because he was a witness in a case of bribery, pre-

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ferred against his nephew Doorga Pershad Baboo. From the inquiries made by the darogah, it appeared that there never was any woman of the name of Foollo Bebee, but that the prisoner had still in his house a maid servant called Foollo Dye. There were two witnesses who affirmed her existence before the darogah, but they differed widely in their description of her person. Had there been really a woman of that name, the prisoner would not have hesitated to adduce proofs of her existence. Again, her own pleaders deposed in the sessions court that they neither saw her, nor were any *vakalutnamas* executed in her presence, but that the prisoner gave them the *vakalutnama* in behalf of Foollo Bebee, as well as the bond, and that they thought at the time that she was his daughter, and accepted it upon his guarantee. Brijoloil Ghose, *mooktear*, who had appointed Govindloll Roy and Gholam Russool to prefer the appeal in Foollo Bebee's name against the sudder ameen's decision, states that he obtained the *mooktearnama* from Kasseenath Chowdry, deceased, the pleader for Foollo Bebee in the sudder ameen's court, at the request of the prisoner, but he neither knew nor saw the woman. The *razeenama* he put in on the part of Foollo Bebee, through her pleaders, was according to the instructions of Kasseenath Chowdry and Motee Singh, servants of the prisoner. Some of the witnesses for the defence deposed that the bond was given to the prisoner by Foollo Bebee personally, while others depose that it was given to him by her servants. Four of the witnesses, whose names were on the bond, deny that they ever were witnesses to it, or ever affixed their signatures. Juggernath Bukshee, against whose name the bond is drawn, was *serishtadar* in the Manbhoom collectorate on the 15th Assin 1244 B. S., the date of the bond, and was present there at the time on a charge of bribery. Certain *roobukarees* of that collectorate in his handwriting, and his application for leave in 1840, also written and signed by him, were forwarded by the collector at the requisition of this court, and they differ with the signature on the bond. It is stated in the bond that the money was received through Chotololl Baboo, but no proof of the fact was adduced.

"Radhabullub Sircar, pleader, deposed to the fact of the prisoner having given the stamp for the plaint in the sudder ameen's court.

"Hoojutoollah, pleader in the judge's court, in behalf of the heirs of Juggernath Bukshee, deposed that his clients assented to an adjustment in the case, but never paid any money towards it.

"The statement of the prisoner that the sudder ameen got up this case against him, because he was a witness in a charge of bribery brought against the sudder ameen's nephew, is disproved

entirely by the fact of the forgery case being instituted long before the charge of bribery was made.

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"Considering the established facts in this case, that there was no such individual as Foollo Bebee; that Juggernath Bukshee was in the collectorate of Maubhoom at the date of the execution of the bond; that the signature on the bond differs from other signatures subscribed by him on different documents; that the prisoner gave the bond to the pleaders; that he gave the stamp for the plaint in the sudder ameen's court, and that the suit there, and the appeal in the judge's court, were conducted under his instructions; that he was throughout, the chief instrument in originating and conducting the suit; there is evidence sufficient to convict him of uttering the bond, knowing it to be forged, and there is strong presumption that he forged it. The *futwa* of the law officer is to this effect, and concurring in the finding, I sentenced the prisoner as stated in the proper column."

Sentence passed by the lower court.—Three (3) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"It has been urged by the *mooktear* for the appellant, that his client has not had a fair opportunity of defending himself, on account of the charge having been allowed to remain dormant in the judge's court upwards of four years; that Foollo Bebee is gone to her home in Marwar, and Chotololl, the person through whom Juggernath Bukshee borrowed the money, is dead.

"*Secondly*.—That Brijloll, one of the witnesses on whose evidence the judge relies, has deposed falsely in stating that he received his *mooktearnama* ready verified from a person other than Foollo Bebee, as the *mooktearnama* of which he tenders a copy, shows that he presented it for verification himself.

"*Thirdly*.—That the judge has made an important mistake as to dates on which he founds his assertion; that the charge of forgery originated before Hunsraj, the prisoner, had been cited as a witness against the sudder ameen's nephew.

"On the first point it may be remarked that at any period that the charge was pending in the judge's court, it was open to the prisoner to apply to have these people examined, and if he had been innocent, it would have been natural for him to have done so. The evidence of prisoner's witnesses shows that Foollo was not a *purda-nusheen*, and there could, therefore, have been no difficulty in causing her attendance.

"*Secondly*.—It is not clear that the certificate to which allusion has been made, was given at the time the *mooktearnama* was presented for verification, or when it was filed in the case. If this witness's evidence, however, were rejected, there remains ample proof independent of it.

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"*Thirdly.*—There is nothing to induce a belief that the sudder ameen was actuated by improper motives in taking the course he did. The mere fact, (if true,) that Humsraj, the prisoner, had been cited as a witness against his nephew, would be more likely to induce him to be conciliatory than harsh to him.

"It is clear that Juggernath Bukshee was at Manbhoom at the time the bond, purporting to be signed by him at Berhampore, was executed.

"Four witnesses to the bond deny all knowledge of it, and Hoojutoolla, pleader for the pretended debtor in the appeal court, deposes that no consideration was paid to obtain the filing of a *razeenama*. It is clear, therefore, that the bond is a forgery.

"Numerous witnesses give evidence to the prisoner having been the only active person in the civil case; that he gave the *vakalutnamas* to be filed, the stamp paper for the plaint and the forged bond to be filed. The evidence, which has been tendered in defence, to the effect that five years ago Foollo Bebee gave the prisoner the bond in their presence, is not credible. It is most improbable that seven men should have been present on such an occasion, and much more improbable that seven men could be found to recollect such a trivial circumstance after five years. I consider that the prisoner has been properly convicted of the crimes laid to his charge, and his appeal is, therefore, rejected.

"I must observe that I think the sentence passed was much too lenient. The forgery appears not to have been, as is most common in such cases, an act in defence, but an act of aggression; and the filing of it was an attempt to make the civil court subservient to purposes of robbery or extortion. It is difficult to conceive a case of forgery, and of knowingly filing a forged bond involving a higher degree of criminality than this. It was one, therefore, which called for the maximum instead of the minimum punishment allowed by law."

CASES

IN THE

NIZAMUT ADAWLUT.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

RAMPERSHAUD SOOKOOL, RAMDIAL SOOKOOL AND MERREELAL SOOKOOL,

versus

MUNGLEDEEN SOOKOOL (No. 15), ROGOOBEER SOOKOOL (No. 16) AND LAL MOHUN SOOKOOL. (No. 17.)

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February 2.

Case of MUNGLEDEEN SOOKOOL and others.

The sentence passed upon the prisoners on a conviction of culpable homicide, in dissent from the *futwa* of the law officer, affirmed by the Nizamut Adawlut.

CRIME CHARGED.—1st count, wilful murder of Dwarkapershaud Sookool, and severely wounding Rampershaud, Merreelal and Ramdial; and 2nd count, accomplices in the above murder and wounding.

Committing Officer, Mr. R. C. Raikes, magistrate of Mymensingh.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensingh, on the 3rd January 1852.

Remarks by the sessions judge.—" Both parties are Hindoostanees and relatives; and from the evidence of the civil surgeon it appears that Nos. 15 and 16 are great opium eaters, which probably made them reckless of the manner in which, and with what, they attacked the deceased and the prosecutors. The prosecutors and prisoners had gardens adjoining each other, and early on the morning of the 19th October, No. 15 accused Ramdial of taking vegetables from his garden, which led to abuse, and it would appear that No. 15 was beaten by the deceased and others in the first instance, and that he then came out of his house with Nos. 16 and 17, his brothers, and attacked the deceased and the prosecutors, (who were all severely wounded,)

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with swords, for although only one of the eye-witnesses, No. 1, says that the deceased had an iron-bound *lattee* in his hand, which he held up and threatened to beat No. 15 with, the prisoner's statement to that effect is corroborated by the evidence of the civil surgeon, which shows that there were contusions on the head and marks of blows of a *lattee* on the back, back of the neck, and arms of No. 15, and the eye-witnesses could not or would not account for the way in which these had been caused.

"The attack upon the deceased and the three prosecutors by the three prisoners is proved by the eye-witnesses, and No. 15 before this court pleaded 'guilty' to the charge of wounding. In the Mofussil and before the magistrate he said that Ramdial was taking his vegetables, and on forbidding him they abused each other, when the presecutors and the deceased seized and beat him, and that he brought his sword and wounded them all, and that the deceased had struck him on the head with an iron-bound *lattee*, and on the foot, thumbs and leg, (on which there are small incised wounds,) with a *koonta* or *spud*. In the foujdaree, Nos. 16 and 17 set up an *alibi*, and said that on their return they found the prosecutors had been wounded. Before this court No. 15 assigned the same cause for the quarrel, and that the prosecutors seized and beat him, and that after Rampershaud had struck and cut him with a *koonta*, the prosecutors' women released him, and that as he was going into the house, the deceased came with an iron-bound *lattee*, and the others with *lattees* and a sword, and stood before his house abusing him, and thinking if he went out unarmed, they would seize him, and that if he took a sword they would not come near him, and he be able to run away, he did so, but they surrounded him, and the deceased taking up the iron-bound *lattee* to strike him, he shut his eyes and began to cut at them, and does not know who was wounded, and how often, in the row. No. 16 simply alleged he was falsely charged; and No. 17, that when the row took place he went to call his father from a neighbour's house. The *futwa* of the law officer has been given above; and as the death of Dwarkapershaud was caused in a sudden quarrel without premeditation, I would convict all the prisoners of being accomplices in the aggravated culpable homicide of Dwarkapershaud Sookool, and of severely wounding Ramdial, Rampershaud, and Merreelal, and recommend a sentence of seven (7) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The evidence of the witnesses as to the circumstances which led to this sanguinary fight is not satisfactory. It is clear from the evidence of the surgeon that the prisoner Mungledeen was seriously beaten; and the most probable cause for the attack is that Mungledeen, exasperated at the treatment he had received

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from the prosecutors and the deceased, flew to arms, as is the habit of Hindoostanees, and joined by his brothers, the other two prisoners, came out of his house (where the prosecutors and deceased were standing) ready to resent the injuries he had received, and that abuse was followed by blows. The prisoner states that the deceased was armed with an iron-bound *lattee*, and threatened to strike him. The prisoners' acts cannot be justified even upon this ground were there evidence to the fact; but the provocation received was doubtless great; and I agree with the sessions judge in convicting the prisoners of culpable homicide and sentencing them, as proposed by him, to seven (7) years' imprisonment each, with labor and irons."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

LUTCHMUN TEWAREE BRAHMIN,

versus

SHEWNATH (No. 5), RUGHBEER SINGH (No. 6) AND RAMNATH SINGH (No. 7).

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The court of Nizamut Adawlut, deeming the offence committed by the prisoners to amount only to aggravated culpable homicide, convicted them of that offence, and sentenced one to fourteen years' imprisonment, and the other two to ten years' imprisonment each.

CRIME CHARGED.—No. 5, 1st count, wilful murder of Gungasahye Tewaree; and 2nd count, culpable homicide of Gungasahye Tewaree, and Nos. 6 and 7, accomplices in the above crime.

Committing Officer, Mr. W. T. Tucker, officiating magistrate of Patna.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 19th December 1851.

Remarks by the sessions judge.—"The reason of this reference is that I consider the punishment to which I am competent to sentence the prisoners insufficient for the aggravated offence of which they have been convicted.

"The account of the affair given by the prosecutor, in which he is corroborated by many eye-witnesses, is this:—The prisoner Ramnath had in his absence, in the morning, removed the border between his poppy field, in which the other prisoners are partners, and that of the prosecutor and deceased, and had made a new border, taking in a cubit's breadth of the latter. Upon finding what had been done, when he came to work, he removed the new border and watered up to the place of the original one. In the evening Ramnath came up to him and the deceased as they were raising water from the river at some little distance from the fields in dispute, commenced a quarrel upon the subject, and crying to the other prisoners for assistance, was joined by

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them, when Shewnath, prisoner, struck deceased with a *gurasa*, an instrument like a battle axe, which weighs, with its long bamboo shaft, one seer 5-16ths, and felled him to the ground. He was picked up insensible, and died the same night at the thanna.

"Phoolman, Suhdeoun Singh, Modan Singh, Petumber Singh and others were eye-witnesses to the assault. They state positively that Shewnath struck the deceased with the edge of the *gurasa*, and that the other prisoners beat him with their *lattees* afterwards.

"The *gurasa* in court was put away in some newly-reaped *joar* by the witness Suhdeoun Singh, and discovered there, and delivered to the police by the witness Nundlall Singh, who says Suhdeoun Singh's wife told him where it had been hidden.

"The eye-witnesses above-named, with the exception of Phoolman, who is related to the prosecutor, cannot be suspected of being biased against the prisoners, as they are of the same caste, and some of them distantly related to them.

"It is, however, clear from the evidence of the civil surgeon, that the fracture of the skull, which caused deceased's death, was not accompanied by an incised wound, so that the injury must have been inflicted either with a club, or the back of the *gurasa*, showing that the prisoner Shewnath did not intend to kill the deceased.

"Still the weapon wielded, even so as to strike with the back, was a most formidable one, as the result has proved; and neither Shewnath nor Rughoonath were present when the altercation commenced; and Ramnath, moreover, deliberately called them to his assistance, so that none could plead in his excuse the suddenness of the provocation. As, moreover, Ramnath and Rughoonath appear to have struck deceased with their *lattees* after he had been felled by the blow from the *gurasa*, all are, in my opinion, proved guilty,—Shewnath of culpable homicide, and Ramnath and Rughoonath, being present, of aiding and abetting in the same and themselves beating the deceased under circumstances of aggravation. I would recommend a sentence of fourteen (14) years' imprisonment with labor in irons to be passed on Shewnath, and of ten (10) years', also with labor in irons, upon Ramnath and Rughoonath."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"The evidence to the prisoner Shewnath felling the deceased by a blow on the head from a *gurasa*, and to Ramnath and Rughoonath striking him with their clubs while on the ground, is strong and concurrent, and it is clear, from the evidence of the surgeon, that the blow on the head fractured the skull and caused death. He also deposes to there being marks of blows on the chest, and different parts of the body, which further

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corroborates the testimony of the witnesses as to the part taken by the other prisoners in the assault.

"The pleader on behalf of the prisoners took exception to the evidence of the eye-witnesses as being contradictory and therefore unworthy of credit; the only material contradiction is that the witnesses depose to the prisoner Shewnath striking the deceased with the blade of the *gurasa*, while the evidence of the surgeon proves that the wound on the head was a contused and not an incised one, and must have been inflicted with a heavy blunt instrument. The witnesses consistently speak to the prisoner Shewnath striking the deceased with the *gurasa*, and seeing the deceased fall from the blow, and the blood flow from the wound, they may have naturally concluded that the edge and not the shaft struck him. I do not think this circumstance affects the credit of the witnesses.

"The quarrel was sudden, but it arose only with the prisoner Ramnath, and the prosecutor and the deceased; the former called the other prisoners who were working close by to his assistance; the prisoners were armed, but with weapons which are ordinarily worn by the peasantry of Behar. There is no evidence of a premeditated intent to kill. The act was one of heat and passion, though the less excusable on the part of Shewnath and Rughbeer, who personally received no provocation, and amounts, according to the precedents of this court, to aggravated culpable homicide. I convict the prisoners of this offence, and sentence Shewnath to be imprisoned for fourteen (14) years, and Ramnath and Rughbeer Singh for ten (10) years, all with hard labor and irons in banishment."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge*.

GOVERNMENT

versus

MUSST. MULLEE (No. 2), MUSST. CHUMPA (No. 3), MUSST. MOOKTEE (No. 5), MUSST JASSOODEE (No. 6) AND RADHASHAM PUTNAIK (No. 7).

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February 3.

Case of MUSST. MULLEE and others.

The sentence passed on the prisoners, on a conviction of perjury, affirmed by the Nizamut Adawlut.

CRIME CHARGED.—No. 2, perjury, in having, on the 6th March 1851, deposed, under solemn declaration made instead of an oath, before the deputy magistrate of Bhudruck, that the prisoner Gunesham Putnaik wounded Musst. Bimlee with a sword and laid open her head, and cut her ear, from the effects of which she died, and that she saw the prisoner Gunesham Putnaik walking about with a sword, and that Burjoo Mhaintee, Sham Putnaik, Russanund Dass, Unnoo Punda, Oochubanund Dass, Rughoo Dass, Mano Dass and Mudhoo Dass took away the

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body of Bimlee and burnt it. And having, in opposition thereto, stated before the sessions judge, on the 2nd June 1851, that Musst. Bimlee was attacked with *bát* or colic, and fell down on some stones and died, and that when Gunesham Putnaik was walking about in the court-yard, she saw no instrument in his hand, and that she did not see the body of Bimlee taken away, the same being false, and having been deliberately and intentionally made on a point material to the issue of the case. No. 3, perjury, in having, on the 6th March 1851, deposed, under a solemn declaration made instead of an oath, before the deputy magistrate of Bhudruck, that she knew that Gunesham Putnaik cut down Musst. Bimlee with a sword, and on hearing Oochubanund Dass call out, she went to the house of the defendant and saw Musst. Bimlee lying there on the ground, with a wound about eight fingers in length and two fingers in breadth on her head, and the defendant Gunesham Putnaik flourishing about his sword outside the house; and that on Radhasham Putnaik (the defendant's brother) asking for the sword, he put it down and went away, and that after Musst. Bimlee died, Russanund Dass and others consulted together and burnt the body of Bimlee; and having, in opposition thereto, stated before the sessions judge on the 2nd June 1851, that Musst. Bimlee was attacked with *bát* or colic, and fell on some stones and was wounded, and that she did not see the wound nor Gunesham Putnaik, (the defendant,) at that place, or know anything about the body of Bimlee having been taken away, the same being false, and having been deliberatly and intentionally made on a point material to the issue of the case. No. 4, perjury, in having, on the 28th April 1851, deposed, under a solemn declaration made instead of an oath, before the deputy magistrate of Bhudruck, that she on hearing the mother-in-law of the deceased, Musst. Bimlee, cry out, went to the spot and saw Musst. Bimlee lying wounded, and blood flowing from her head, and a sword glittering in the hand of Gunesham Putnaik, and on Radhasham Putnaik asking him for the sword he went out on the road, and that Musst. Bimlee afterwards died; and having, in opposition thereto, stated before the sessions judge, on the 2nd June 1851, that she did not know how Musst. Bimlee was killed, and that on hearing the cries of the deceased's mother-in-law, that Musst. Bimlee was attacked with *bát* or colic, and had fallen down, she went there, but did not see the sword in the hand of Gunesham Putnaik or hear of his having cut down Musst. Bimlee, the same being false, and having been deliberately and intentionally made on a point material to the issue of the case. No. 5, perjury, in having, on the 28th April 1851, deposed, under a solemn declaration made instead of an oath, before the deputy magistrate of Bhudruck, that when she went out to ease herself, on hearing the cries of the defendant's mother, she went to the place where she was, and saw a sword

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glittering in the hand of the defendant, and being alarmed returned to her house, and that on the deceased's mother-in-law calling her, she went and saw the deceased lying wounded, and heard from the defendant that in consequence of deceased's being a bad character he had killed her, and that after Musst. Bimlee died, Burjoo Mhaintee, Russanund Dass, Rughoo Dass, Mano Dass, Sham Putnaik, Unnoo Punda, Mudhoo Dass and Juswunt Mhaintee carried away her body to burn it; and having, in opposition thereto, stated before the sessions judge, on the 2nd June 1851, that when she was seeing the *ramneelah*, near the door of Radhasham's house, she heard the children cry out that the *buhoo*, (Musst. Bimlee,) was attacked with *bát* or colic, and had fallen on the stones of the steps and died, and that she went to the defendant's house, and saw the mother-in-law rubbing *huldee* or turmeric on Musst. Bimlee's stomach, at which time Gunesham Putnaik was on the road, and she did not see the sword in his hand, and having gone to sleep she did not see who took away the body of Musst. Bimlee, the same being false, and having been deliberately and intentionally made on a point material to the issue of the case. No. 6, perjury, in having, on the 29th April 1851, deposed, under a solemn declaration made instead of an oath, before the deputy magistrate, that Gunesham Putnaik killed Musst. Bimlee with a sword, and that blood flowed from her head, and on Russanund's mother bringing a light she saw two wounds on the head of Musst. Bimlee, eight fingers in length and two fingers in breadth, and that the defendant was at that time standing outside his house with a sword in his hand, and on Radhasham Putnaik asking for the sword, the defendant threw it into a well; and having, in opposition thereto, stated before the sessions judge, on the 2nd June 1851, that Gunesham Putnaik did not kill Musst. Bimlee, and that Musst. Bimlee was six months previously sick with *bát* or colic; and having been attacked with the said disease, she fell on the stones of the steps and died, and that the blow she received from the stones did not split her head, but merely caused it to be indented, the same being false, and having been deliberately and intentionally made on a point material to the issue of the case. No. 7, perjury, in having, on the 29th April 1851, deposed, under a solemn declaration made instead of an oath, before the deputy magistrate of Bhudruck, that Gunesham Putnaik killed Musst. Bimlee with a sword, and that the deceased had a wound on her head eight fingers in length and two fingers in breadth, from which blood flowed, and at that time Gunesham Putnaik had a sword in his hand, and on his asking him for it he replied that he would throw it into the well and went out of the house, and that Gunesham Putnaik said

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that he had cut down Musst. Bimlee with the sword, and after Musst. Bimlee died, he told the neighbours first that Musst. Bimlee died from *bát* or colic, and afterwards that Gunesham Putnaik had killed her, and after consulting with them, burnt her body; and having, in opposition thereto, stated before the sessions judge, on the 2nd June 1851, that Musst. Bimlee was sick with *bát* or colic, and during an attack of the disease fell on the stones of the steps and received a wound on her head, which caused the abrasion of the skin about half a finger in length and died, and he neither saw Gunesham Putnaik cut down Musst. Bimlee with a sword, nor knew that he had done so, nor did he see Gunesham Putnaik walking about with a sword, the same being false, and having been deliberately and intentionally made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. W. J. Allen, magistrate of Balasore, Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 21st November 1851.

Remarks by the sessions judge.—"All the prisoners in this case were sent up to give evidence on the part of the prosecution in the case of Government *versus* Gunesham Putnaik and five others, charged with the murder of Musst. Bimlee, &c., who were tried and convicted at the sessions held in the month of May last, and finally sentenced by the Sudder Nizamut Adawlut to different terms of imprisonment, under date the 9th of August, but they retracted the statements they had made before the foujdaree court touching the murder of Musst. Bimlee, and alleged that her death was caused by her falling on some stones while suffering from an attack of a colic, and receiving certain wounds on her head, as set forth in the charges recorded in column 9.

"The prisoners, Nos. 2, 3 and 5, admitted having made the contradictory statements laid to their charge. Musst. Jassoodee, No. 6, first stated that she had deposed before the deputy magistrate according as she had been tutored in the Mofussil, and then again said that what she stated before the deputy magistrate was not recorded, and that she made the same statement before him as she had done before the sessions court. And Radhasham Putnaik, No. 7, stated that he made the same statements both before the police and the deputy magistrate according as he had been informed by Oochubanund Dass and Russanund Dass, and that being himself a cripple from leprosy, he was unable to move about himself to ascertain the real particulars of the case.

"The *futwa* of the law officer, which accompanies, convicts all the prisoners of the crimes charged, and concurring in their

conviction, I sentenced Nos. 2, 3, 5 and 6 to three (3) years' imprisonment, with labor suitable to their sex, and No. 7 to simple imprisonment, in consequence of his being a cripple, and having lost his toes as well as several of his fingers from leprosy. Had it not been for the relationship which existed between the prisoners Nos. 6 and 7 and Guneshaṁ Putnaik, who killed his wife, Musst. Bimlee, the one being his mother and the other his brother, which naturally made them reluctant to give evidence against him, and that the other females, being either born or brought up from their infancy, and otherwise connected with the family, were entirely under the influence of the said Guneṣham Putnaik, and the other prisoners in the murder case, I should have passed a more severe sentence against them."

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Case of Musst. Mullee and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The particulars of the case, out of which the perjury arose, will be found in the August number of the Criminal Reports, at pp. 1103 to 1111.

"The prisoners have appealed. They admit that they made the contradictory statements charged against them, and plead ignorance and compulsion in excuse. If such an excuse were admitted, there would be no end to the commission of this too frequent crime. I see no reason to interfere with the orders of the sessions judge."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

MUSST. WOCHOBEE BEWA

versus

SHEIKH SHERAJDEE (No. 1), SHEIKH ROSHUM (No. 2) AND SHEIKH NOBEEAH (No. 3).

1852.

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Case of Sheikh Sherajdee and others.

The Nizamut Adawlut, in concurrence with the opinion of the sessions judge and dissenting from the *futwa* of the law officer, acquitted the prisoners charged with culpable homicide. The court deemed the evidence of the eye-witnesses to be unworthy of confidence, and remarked on the objectionable practice of summoning wives to give evidence against their husbands.

CRIME CHARGED.—1st count, culpable homicide of Sheikh Akbur; 2nd count, accomplices in the above crime, and 3rd count, accomplices before and after the fact of the above crime.

Committing Officer, Mr. R. C. Raikes, magistrate of Mymensingh.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensingh, on the 7th January 1852.

Remarks by the sessions judge.—"The deceased's wife charges the prisoners with having killed the deceased on account of an intrigue with the wife of No. 2, who is alleged to have been beaten by the three prisoners near No. 2's house, and

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about two hundred *haths* from deceased's house to which he crawled and died four days afterwards. The evidence of the civil surgeon shows that all the ribs on both sides were broken, but from the decomposed state of the body, could not say whether they had been broken before or after death.

"The evidence of the eye-witnesses is unworthy of credit. They spoke to the deceased after the prisoners had run away on seeing them; but neither gave him any assistance, nor told his wife or two brothers, who live close by: and indeed told no one (witnesses Nos. 1 and 2,) not even their own fathers, who are also witnesses in the case. This evidence was not forthcoming on the first investigation by the police, but on the magistrate ordering the darogah to inquire if there were no eye-witnesses, these people were produced, and the reason for not having stated to the 1st darogah what they had seen was by one of the male witnesses, that all the people of the village had run away, and by the other two that they were not asked, and the prisoner's wife, witness No. 5, complained that she had been imprisoned until she gave the evidence desired.

"The deceased is stated to have died four days after the injuries had been received; but no complaint was made before or after his death by his widow or his two brothers, witnesses Nos. 13 and 18, who allowed the body to be buried, and it was only brought to the notice of the police by a dawk *peadah* who heard of it as he passed by. The prisoners have all along denied the charge, and although they have been unable to assign and prove enmity on the part of the prosecutrix or witnesses, I cannot, on such evidence, concur in the *futwa* of the law officer, and therefore recommend their acquittal."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I concur with the sessions judge in deeming the evidence of the eye-witness to the assault on the deceased unworthy of confidence and acquit the prisoners. There is much reason to suspect that the evidence was obtained by unfair means, especially that of Musst. Phelanee, the wife of the prisoner Sheikh Sherajdee and of Musst. Furmanee, the wife of the prisoner Roshun. Though the testimony of a wife against her husband may be received in our courts, yet the practice of summoning a wife to give evidence against her husband has been always held to be objectionable, and it is one which should on no account be encouraged."

PRESENT:
A. DICK, ESQ., *Judge.*

BOTULWA
versus
JODHUN.

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Case of JODHUN.

Prisoner convicted of murder, but not with *malice prepense*, and sentenced to transportation for life.

CRIME CHARGED.—Wilful murder of Horil Burhi.

Committing Officer, Mr. W. T. Tucker, officiating magistrate of Patna.

Tried before Mr. G. Gough, commissioner of Patna, with powers of a sessions judge, on the 14th January 1852.

Remarks by the commissioner.—"The following are the details of this case:—It appears that the prisoner was quarrelling with his uncle Horil (Koormi) on the evening of the 3rd December last, in consequence of the latter having been working in the employ of a person of lower caste than himself. While this quarrel was going on, the deceased and others went to the spot to interfere and prevent violence. On this the prisoner armed himself with a sword, and commenced an attack upon the deceased, inflicting upon him several desperate wounds, which subsequently caused his death in hospital, on the 8th December 1851.

"The above is proved by the clearest evidence, and the prisoner, though he denied the charge on trial before me, confessed before the police jemadar, when he was apprehended, that he had attacked the deceased, as I have already described, which confession is proved by the evidence of two witnesses.

"There is nothing to show that there was any previous enmity between the prisoner and the deceased, and from the evidence adduced, it is to be inferred that the attack made on the latter emanated from momentary passion and not from malice afore-thought. It is also probable, though the fact is not clearly proved, that the prisoner was at the time excited by drink.

"The assessors, who sat with me on this trial, pronounced the prisoner guilty of wilful murder, a finding in which I concur; and, under all the circumstances of the case, I would recommend that the prisoner Jodhun be sentenced to imprisonment for life, in banishment, beyond seas."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.) —"Four eye-witnesses have declared that they distinctly saw prisoner strike Horil Burhi, deceased, with a sword several times; and the surgeon has deposed that the deceased, Horil Burhi, died in consequence of the wounds inflicted on him; and it is in evidence that there was no previous quarrel, or existing enmity between the deceased and prisoner. The court, therefore, convict the prisoner Jodhun of murder, but not with *malice prepense*, and sentence him to transportation for life."

PRESENT:

A. DICK, ESQ., *Judge.*

GOVERNMENT

versus

RAMCHURN RAI.

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Case of RAMCHURN RAI.

Prisoner convicted of culpable homicide for killing a burglar while in a situation incapable of resistance, and sentenced to seven years' imprisonment.

CRIME CHARGED.—Wilful murder of a thief, whose name and place of abode are unknown.

Committing Officer, Mr. F. Tucker, magistrate of Tirhoot.

Tried by Hon'ble R. Forbes, sessions judge of Tirhoot, on the 17th January 1852.

Remarks by the sessions judge.—"In this case, prosecuted by Government, on the information of one Pirthee Rai, whose house was burglariously entered on the night of the occurrence, the prisoner is charged with having wilfully murdered a thief, whose name and place of abode are not known, under the following circumstances:—On the night of the 26th December last, or the 18th Poos 1259 F. S., the informant, Pirthee Rai, was asleep in his house in the village of Dostpore, when being awoke, about midnight, by the rattling of *thalees* or dishes, he gave the alarm, calling out 'thieves,' 'thieves.' This brought to the spot his nephew, the prisoner Ram Churn Rai, who living close by came running up with a drawn sword in his hand. He observed three thieves in the act of decamping, and seeing another coming out of a hole in the wall, one-half of his body outside and the other half in, with one brazen and two bell-metal *thalees* in his possession, dealt him two blows with his sword on the back of the neck, which all but severing the head from the trunk, occasioned instant death.

"This was seen by three of the neighbours, adduced as eye-witnesses for the prosecution, Soopun No. 1, Nunhoo Nudaff, No. 2, and Busgit Gorait, No. 3, who also attracted to the place by the alarm given by the house-holder, Pirthee Rai, came there, one after the other, just as the prisoner was in the act of striking the deceased, which they all depose to having witnessed, all three of them likewise stating that they observed three other thieves running away, who were pursued by the villagers.

"The witnesses to the Mofussil inquest on the body of the deceased, deposed to its exhibiting two wounds or cuts on the back of the neck, nearly dividing the head from the body, and a smaller one like a scratch from a sword on the right shoulder, with some black and blue marks on other parts of the body. The medical officer, too, who had examined the body and who

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was a witness for the prosecution in this court, deposed to his finding 'two incisions on the back of the neck, the first chipping 'off a portion of the back of the skull, and the second dividing 'the spine, causing instantaneous death.'

"At the thanna the prisoner made a voluntary confession, which is attested by subscribing witnesses, to the effect that seeing the deceased thief going out of the hole, taking with him three *thalees*, he struck him two blows with a sword on the neck, which cutting off the head killed him. Before the magistrate, however, he stated that the informant, Pirthee Rai and others, after killing the deceased, put the body inside the burglarious hole, and told him, (the prisoner,) to cut off the head, which he accordingly did with a sword.

"In this court the prisoner pleading 'not guilty,' made a defence similar to that before the magistrate, but did not call any witnesses.

"The *futwa* of the law officer convicts the prisoner, with reference to the weapon with which he killed the deceased, of the crime of wilful murder, but adverting to the circumstances of the case, and specially to its being doubtful whether the prisoner had it in his power to secure the thief and recover the property without killing him, or that he despatched him under the apprehension that the thief would either resist, or get off with the property, declares *kissas* barred, but pronounces the prisoner liable to exemplary punishment by *akoobut*.

"It is my duty to refer the case to the Nizamut Adawlut, because the verdict found by my law officer being wilful murder, the final order can only legally emanate from that court. Not questioning the correctness of the *moofteé's* exposition of the Mahomedan law of murder, I am yet of opinion that the crime, of which the prisoner stands convicted, both by his own Mofussil confession and the evidence of eye-witnesses, cannot be said to amount to wilful murder as defined by the English law. There is wanting, in the first place, that which constitutes, according to our law, the essential characteristic of wilful murder, *viz.*, any thing like *malice prepense*, or a premeditated intention to take the life of the deceased, arising from, or accounted for, by any pre-existing feeling of personal enmity or revenge, for in this case the name, person and residence of the deceased are altogether unknown. It is true that the nature of the weapon used by the prisoner may be considered as indicative of an intention on his part, if not to kill, at least to wound or severely maim. I have, however, no doubt in my own mind, that the prisoner both armed himself with the sword, and mortally wounded the deceased under the mistaken, but certainly prevalent impression, of its being, under any circumstances, a meritorious action to kill

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a thief, an opinion, however, of which it is most desirable that the public mind should be disabused.

"The prisoner himself has stated that before he struck the deceased, he observed the other thieves decamping, to which effect the three eye-witnesses have also testified. The deceased was thus left by himself, unaided and alone. The prisoner ought accordingly to have secured or made an effort, with the assistance of the witnesses, if necessary, to secure the deceased, who, it is clear, would singly have been powerless to resist so many, before resorting to the extreme measure of needlessly putting him to death. Viewing the prisoner's conduct in this respect to be criminal, and manifesting a wanton disregard of human life, and adverting to the precedents given below,* especially the last, I would convict the prisoner of culpable homicide in unnecessarily killing a thief, and recommend his being sentenced to imprisonment for seven (7) years, with labor and irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.)—"The evidence is distinct that the prisoner killed the thief, when he was in a situation, which rendered him incapable of resistance. It was, however, the deed of a moment, when the guilt of the thief was indubitable. The court, therefore, concurring with the sessions judge, convict the prisoner of culpable homicide, and sentence him, as recommended by the sessions judge, to seven (7) years' imprisonment, with labor, but without irons.

* I. Alee Moomuhud *versus* Allah Buksh, Nizamut Adawlut Reports volume II., page 322.

II. Government *versus* Nundoo and Dhujoo, Nizamut Adawlut Reports, volume V., page 142.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

SUTTUN BHOOCEANA

versus

JOORUN.

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Case of JOORUN.

The sentence passed by the sessions court, on the conviction of the prisoner of culpable homicide, affirmed by the Nizamut Adawlut, but the court remark that the offence amounted to murder, and certainly under para. 16 of Circular Order, dated 16th July 1830, the prisoner should have been indicted for the graver offence.

CRIME CHARGED.—Culpable homicide.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Captain G. N. Oakes, 1st class assistant agent to the Governor General, Manbhoom Division.

Tried by Major J. Hannyngton, deputy commissioner of Chota Nagpore, on the 20th December 1851.

Remarks by the deputy commissioner—"In this case it appeared that the prisoner had cut some brushwood in a jungle belonging to a neighbouring village, and the deceased, who had charge of the jungle, discovering this, brought some people with carts to carry it away. While this was being done, the prisoner came with an axe in his hands, and after some altercation, struck the deceased with the back part of the axe on the head and other parts of the body, inflicting no less than eleven wounds, so that the deceased, Udae Rai, died on the spot. This was proved by the evidence of three eye-witnesses. The prisoner pleaded an *alibi*, to which he produced several witnesses. The tendency of the evidence for the defence was that the prisoner had gone to a village some five or six miles' distant on the evening before, and returned home on the evening of the day of the homicide. The axe with which the injuries were said to have been inflicted, had evidently been recently repaired by putting it in the fire and hammering it. The handle also was burnt, and a black-smith gave evidence that he had made this repair on the day before the fact. The evidence for the defence was elaborate and partly conflicting; some witnesses had seen the defendant at one place, some at another, some had inquired at his house and found he was absent, and altogether it was too circumstantial for truth, when set against the positive evidence of eye-witnesses to the fact. The jury found the prisoner guilty, in which I concurred. The homicide being of an aggravated character, the prisoner was sentenced as shown."

Sentence passed by the lower court.—Imprisonment with labor in irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner has appealed, urging that his defence

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has been fully proved, but I agree with the sessions judge and jury in rejecting the *alibi* set up by the prisoner, and convict him on the evidence of the three eye-witnesses, which is clear and consistent, of the culpable homicide of the deceased. The assault, though it suddenly arose out of a wordy dispute, and the axe was in the prisoner's hand at the time, was marked with circumstances of a great aggravation; the size and weight of the weapon, and the number of the blows, proved, in my opinion, a murderous intent. Certainly the charge should have been one for wilful murder, under the Circular Order of the 16th July 1830, as has been pointed out by the judge in charge of the English department. I confirm the sentence passed by the deputy commissioner, and reject the appeal."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

1852. February 6. Case of NUND KOOMAR BOSE *alias* MADHUB CHUNDER BOSE and others. Trials Nos. 2 to 6.

A prisoner convicted of theft by administering intoxicating drugs in several instances, sentenced to transportation for life. Sessions judge directed to pass sentence against other prisoners implicated, the sentence proposed by him being within his competence.

GOVERNMENT

versus

NUND KOOMAR BOSE ALIAS MADHUB CHUNDER BOSE (No. 1), DINNONATH MITTER (No. 2) AND RAM CHURN MITTER (No. 3).

CRIME CHARGED.—TRIAL No. 2.—Nos. 1 to 3, 1st count, theft of property valued at rupees 19, from Bama Khanky, whilst she was in a state of insensibility, caused by intoxicating liquors administered by the prisoners; 2nd count, being accessaries to the above crime both before and after its perpetration; and 3rd count, receiving the stolen property aforesaid, knowing it to have been so stolen.

TRIAL No. 3.—Nos. 1 and 2, 1st count, theft of property valued at rupees 12-8, from Hurro Raur, whilst she was in a state of insensibility, caused by intoxicating liquors administered by the prisoners; 2nd count, being accessaries to the above crime both before and after its perpetration; and 3rd count, No. 1 receiving the stolen property aforesaid, knowing it to have been stolen.

TRIAL No. 4.—Nos. 1 and 2, 1st count, theft of property valued at rupees 93-8, from Lukheemony Khanky, whilst she was in a state of insensibility, caused by intoxicating liquors administered by the prisoners; and 2nd count, being accessaries to the crime aforesaid, both before and after its perpetration.

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TRIAL No. 5.—No. 1, theft of property valued at rupees 58-8, from Paree Raur, whilst she was in a state of insensibility, caused by intoxicating liquors administered by the prisoners.

TRIAL No. 6.—No. 1, 1st count, theft of property valued at 8 annas belonging to Sana Khotany; and 2nd count, receiving the stolen property knowing it to have been such.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 14th January 1852.

Remarks by the additional sessions judge.—" Under Section VI. of Act XXXI. of 1841, and owing to a difference of opinion respecting prisoner No. 2, in Calendar No. 3, I have the honor of forwarding the accompanying five cases, in all of which the prisoner Nund Koomar Bose *alias* Madhub Chunder Bose has been convicted of crimes. He has acknowledged that he has before been transported for crime; but it was committed beyond the jurisdiction of your court, and there is no record of the nature of that crime. Four of the cases are of a similar nature; in each a prostitute was intoxicated, and when she was in a state of insensibility she was robbed by the prisoner, who absconded. The fifth is a case of petty theft. Considering how dangerous the first-mentioned crime is, and how easily it may lead to *thuggee*, and that the prisoner is incorrigible, I do not think that he should again be let loose on society. I propose that he be imprisoned with labor for life.

" The prisoner, Dinnonath Mitter, has been convicted by myself and the law officer of having been an accomplice in two of the above-said four cases, and under the circumstances, I do not think that he should be punished with less than fourteen (14) years' imprisonment with labor in irons.

" The prisoner, Ram Churn Mitter, has been convicted by me and the law officer in the case of Bama Khanky, of privity to the crime of theft when she was in a state of insensibility from intoxicating drugs, and in the case of Hurro Raur, he has been found guilty by me of being an accomplice in the theft; but he has been acquitted by the law officer. I propose to sentence him to seven (7) years' imprisonment, as indeed I told him I should do, overlooking at the time that, as the law officer had differed in opinion from me in the case of Hurro Raur, I had not the power to do so.

" The annexed statement shows in what crimes the prisoners have been found guilty, and in what they have been acquitted.

Name of Prisoner.	Case No. 2 of Bama Khanky. No. of Prisoner in the Calendar.	Case No. 2 of Bama Khanky. Crime established against the prisoner.	Case No. 3 of Hurro Raur. No. of Prisoner in the Calendar.	Case No. 3 of Hurro Raur. Crime established against the prisoner.	Case No. 4 of Lukheemony Khanky. No. of Prisoner in the Calendar.	Case No. 4 of Lukheemony Khanky. Crime established against the prisoner.	Case No. 5 of Paree Raur. No. of Prisoner in the Calendar.	Case No. 5 of Paree Raur. Crime established against the prisoner.	Case No. 6 of Sona Khotany. No. of Prisoner in the Calendar.	Case No. 6 of Sona Khotany. Crime established against the prisoner.
Nund Komar Bose *alias* Madhub Chunder Bose.	1	Theft of property from Bama Khanky, whilst she was in a state of insensibility, caused by intoxicating liquors administered by the prisoner.	1	Theft of property from Hurro Raur, whilst she was in a state of insensibility, caused by intoxicating liquors administered by the prisoner.	1	Theft of property from Lukheemony Khanky, whilst she was in a state of insensibility, caused by intoxicating liquors administered by the prisoner.	1	Theft of property from Paree Raur, whilst she was in a state of insensibility, caused by intoxicating liquors administered by the prisoner.	1	Theft.
Dinnonath Mitter.	2	Being an accomplice in committing the above theft.	3	Acquitted by the additional sessions judge and the law officer.	2	Being an accomplice in committing the above theft.	2	Acquitted by both officers.	,,	,,
Ram Churn Mitter.	3	Privity to the above fact.	2	Being an accomplice in committing the above theft, acquitted by the law officer.	,,	,,	,,	,,	,,	,,

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The following are the detailed particulars of the five trials, submitted by the additional sessions judge:—

Trial No. 2.—"Bama Khanky lives in Bhowanipore. Towards the end of Kartik, she was visited for some days by the prisoners Nos. 1 and 2, who drank at her house, and one day they were joined by Ram Churn, but he left before the others did so. Bama Khanky was that night made drunk and was robbed of four silver *mulls* and a gold *nuth* valued together at about rupees 15. The prisoner No. 1 sold the ornaments to Greedhur, who has a shop in Kidderpore, whence the *mull* and some pearls, which were in the *nuth*, were recovered. One of the partners in the shop says that prisoner No. 2 was also present when the ornaments were bought.

"Prisoner No. 1 confessed before the police on the 29th of November, and before the magistrate on the 30th of November, that all the prisoners were of the party who stole the property from Bama Khanky.

"Prisoner No. 2 confessed on the 28th of November before the police, that he was present and consented to the theft, and on

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the 1st of December, he said that he was present when Madhub (No. 1,) stole the property, and that Madhub told him that he had stolen the ornaments and had sold them. Prisoner No. 3 confessed before the police, that he was privy to the crime, and before the magistrate he said he was present at the drinking, but that he left the house before the theft took place, and gave his advice against committing it, but that the others brought home the property and sold it.

"The prisoners live together in the same house and were apprehended, owing to information which was given by an ex-darogah. They have no ostensible means of gaining a livelihood and their habits are very irregular, and Madhub has been transported for seven (7) years according to a sentence of the Supreme Court of Calcutta as he himself allows.

TRIAL No. 3.—"The woman Hurro who was robbed lives at Bakera in the Kidderpore thanna. She states that the prisoners Madhub and Ram Churn Mitter, Nos. 1 and 2, came to her house about the 10th of November to eat and drink, and made her drunk and left her, and that the next morning, when she came to her senses she missed her silver *mull*. Her neighbours (witnesses Nos. 1 and 2) heard of her loss in the morning, but no information of the circumstance was given to the police. It is shown, by the evidence of Greedhur Podar, that Madhub and Dinnonath sold to him a silver *mull*, and his *hookas* show that he bought it; but Madhub's name alone is mentioned in the book. Greedhur had a part of the *mull* melted, but the two ends remain whole, and witnesses Nos. 11 and 12, besides Hurro, state that they recognise them as having belonged to Hurro Raur.

"The prisoner No. 1, confessed before the police on the 29th November, and before the magistrate on the 30th November, that he and the other prisoners were engaged in this crime. He did not know the name of the woman, but said she lived in Bakera; and in consequence of the confession which he made, Hurro Raur was discovered, and her deposition first taken on the 3rd of December. The prisoners all live in the same house in Kidderpore, which was hired by Madhub last Kartick, and they have no ostensible occupation.

"The prisoner No. 1, Madhub Chunder Bose, is no doubt guilty of the theft, and I believe the evidence of Hurro Raur, that Ram Churn Mitter was also engaged in committing the crime. The transaction is likely to have made a deep impression on her memory, and she must have often thought of the thieves. Her evidence is supported by the confession of Madhub, and by the circumstance of these two prisoners living together, and of their having been convicted of other similar

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crimes. The law officer differs in opinion and there certainty is not full legal proof of the prisoner's guilt.

Trial No. 4.—" In this case the two prisoners made Lukheemony Khanky drunk at her house in Shapore (*alias* Taleekunge.) Her neighbours saw her in the morning before she had recovered from the effects of the drugs which she had drunk, and heard of her loss; but no information was given to the police. Her neighbours say that they had seen the prisoners at Lukheemony's house, which they, the prisoners, appear to have visited for some days. The crime was first made known to the police by the confessions of the prisoners. They confessed before the police and the magistrate, they sold the stolen property; but differ as to the amount which they obtained for it. One says that they got rupees 41 for it, and the other says that they got rupees 80. The man, (witness No. 11,) who appears to have been pointed out by the prisoners as having bought the property, which consisted of ornaments, denies the transaction; but allows that he has had dealings with the prisoners.

" The circumstances of the case leave no doubt on my mind about the guilt of the prisoners, although the witness No. 11 contradicts their statements about the disposal of the property.

Trial No. 5.—" Paree Raur of Chitla was made drunk and robbed on the 19th of December, and the next day she reported the case to the police at Kidderpore, and said she had lost ornaments valued at rupees 50, and accused the prisoner Madhub who lived with Digumburee. When the prisoner Madhub was apprehended, he confessed before the same darogah, that he made Paree drunk, but that he was not able to get anything from her, owing to a dispute with the man whose mistress she was.

" On the trial before me, Paree and two other women stated that the prisoner Madhub did make her drunk, and that she was robbed. Digumburee was sent for, and she stated that Madhub had lived with her for ten or twenty days, so that there is no doubt about this prisoner being the person who was accused when the crime was reported to the police, and although the theft was not confessed, I fully believe it was committed at the time it was said to have been committed.

" The intention of the prisoner, and his succeeding in making the woman drunk, his character and his having been engaged in similar cases, all show that he was the guilty person.

Trial No. 6.—" The prisoner having been apprehended on the 28th of November, the next day confessed before the police, that he has committed several thefts; and among them that he had stolen a *kotora* from a *Khotta* woman, and had pawned it

to one Greedhur. It was given up from Greedhur's house, who stated that he had received it as pawn for four annas from the prisoner. The woman Sona, who gave her deposition in Hindee, states that she lost the *kotora* from her shop. Witnesses Nos. 8 and 9 state that they recognise the *kotora* as hers, and no doubt she did lose this cup, and I find the prisoner guilty of the theft."

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Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner Nundkoomar Bose *alias* Madhub Chunder Bose, a returned transported convict, has been convicted on full and satisfactory proof, of theft by administering intoxicating drugs in four separate instances, and of simple theft in a fifth case. In concurrence with the recommendation of the additional sessions judge, he is therefore sentenced to imprisonment in transportation for life.

"Respecting the proof of guilt against the prisoner Ram Churn Mitter in case No. 3 (Hurro Raur's) the judge differs from the *futwa* of the law officer which is for acquittal. I find no proof against this prisoner in this case, except the evidence of the person robbed. The prisoner, admitting his guilt in another case, would, if guilty in this, most probably have admitted it also, which he did not do. I am therefore of opinion that the *futwa* is substantially right, and acquit the prisoner in this case. The additional sessions judge will pass his own sentence against him in the other case (Bama Khanky's) in which he has been convicted.

"The additional sessions judge had the power under Section II. Clause 1, Regulation XV. of 1814, to pass a sentence against the prisoner Dinnonath Mitter of the nature and extent proposed; and according to Regulation LIII., Section VI., Clause 2, should have done so, merely suspending the execution of it, until the sentence of this court against the other prisoners was passed. He will do so now."

Present:

R. H. MYTTON, Esq., *Officiating Judge.*

IMDAD ALEE

versus

GOKURAH.

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Case of Gokurah.

A plea raised by a prisoner, that the prosecutor was at enmity with him, not being proved on trial, his appeal on that ground rejected.

Crime Charged.—1st count, burglary and theft of property, value rupees 107, from the house of the prosecutor; 2nd count, keeping possession of the same, knowing it to have been obtained it by theft.

Crime Established.—Burglary and theft.

Committing Officer, Mr. B. R. Perry, deputy magistrate of Purneah.

Tried before Mr. D. Pringle, sessions judge of Purneah, on the 20th September 1851.

Remarks by the sessions judge.—"The prosecutor deposes to his house being so entered by an opening made from the west verandah, and property taken as stated, when, being awoke by the noise, he rose and gave the alarm, on which the villagers joined in the pursuit, four or five thieves being seen to escape; the prisoner's foot tripping, when he fell, and was laid hold of with one of the stolen vessels in his hand. The above particulars being duly verified by the evidence that follows, and the prisoner being an old offender, sentence was passed, as recorded, in concurrence with the verdict finding him guilty."

Sentence passed by the lower court.—To be imprisoned for a period of seven (7) years, with labor in irons, in banishment from the district.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner appeals, asserting that the prosecutor is at enmity with him. He made a similar defence on trial, and the witnesses cited by him to prove it were examined, but they did not support his assertion. He was caught almost in the fact, and has been convicted of similar offences in Purneah and Dinagepore. I see no reason to interfere with the sentence passed at the sessions."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

v.

MIRZA UMJUD ALEE.

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Section XI. Act XIII. of 1851 does not contain a limitation as to the period within which a prosecution under that law can be instituted.

CRIME CHARGED.—HEAD I.—1st count, embezzlement.—In having on the 6th August 1850, or between that date and 28th November 1850, fraudulently applied to his own purposes the sum of Company's rupees 8-6, which sum was part of the proceeds of sale, according to a decree given by his court, and was entrusted to him by reason of his employment under Government as moonsiff of the Kusba Division; 2nd count, having on or between the dates specified in the above count, feloniously stolen the said sum of money therein specified.—HEAD II.—1st count, embezzlement.—In having on the 17th August 1850, or between that date and 28th November 1850, fraudulently applied to his own use the sum of Company's rupees 8-6, being part of the proceeds of a sale, according to a decree of his court, which sum was entrusted to his charge by reason of his employment under Government as moonsiff at Kusba; 2nd count, having on or between the dates specified in the above count, feloniously stolen the said sum of money therein specified.

CRIME ESTABLISHED.—Fraudulent embezzlement of public money.

Committing Officer, Mr. A. E. Russell, joint magistrate of Purneah.

Tried before Mr. D. Pringle, sessions judge of Purneah, on the 28th November 1851.

Remarks by the sessions judge.—"The embezzlement with which this moonsiff is charged, forms one of a series of fraud so committed by him, and which were conclusively established, on documentary proof, after a laborious preliminary inquiry held by me on the civil side, as detailed at length in my *roobukaree*, transmitting the proceedings to the magistrate, the particular instance being selected for his commitment as stated by that officer, because of its coming under the recent Act XIII. of 1850.

"The articles into which the charge is divided, it will be found, belong really to the same transaction, and might have been so included, their separation, however, in nowise affects the case. The first witness examined was Sridut Jha, auction purchaser of trees and a parcel of land at a judicial sale held by order of this moonsiff, as seen from the ameen's *lotbundee* of the 22nd Sawun 1258 M., or 5th August 1850, in whose

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account sale rupees 102 is entered as the price bid, of which the earnest money, rupees 16, is duly acknowledged; rupees 7-10 being retained by the ameen on account of charges, and the balance, rupees 8-6, transmitted to the moonsiff, by an *urzee*, dated the 6th August 1850; upon which the order recorded is 'that the account sale, as received from the ameen, be filed with 'the case.' The witness accordingly produces the ameen's receipt for rupees 16, dated the 5th August 1850, and another receipt given by the moonsiff under his seal and signature for the balance, rupees 8-6, dated the 17th idem. But of neither sum is any trace found in the moonsiff's register of deposits for 1849 and 1850. The moonsiff was suspended, as seen from the judge's *roobukaree*, on the 28th November 1850. On the 27th January 1851, the above sale was reversed, it appears, in appeal. On the 9th February following, the moonsiff repaid to the witness the amount so received from him, whose receipt for this the moonsiff himself has produced in his defence. The charge, as laid against the moonsiff, is thus incontrovertibly established, whose refund of the amount, upwards of two months after he had been suspended, to answer this and similar charges, was only a confession of judgment, which it is obvious can in no-wise go to exculpate him; my assessors, concurring in this verdict, sentence was passed as here recorded."

Sentence passed by the lower court.—One (1) year's imprisonment, without labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" Moonshee Ameer Alee for appellant has contended that by Section XI. Act XIII. of 1851, instances of embezzlement, which may have occurred more than six months prior to the commencement of the prosecution, cannot be tried under that law.

" But this is quite a mistaken reading of the section in question. It contains no limitation to institution of charge, and merely provides that 'any offender may be proceeded against on 'the same charge for any number of distinct acts of embezzle-'ment committed by him within six months, from first to last 'of such acts.'

" The pleader has also urged that the prisoner served thirty years as a moonsiff without fault, and that this instance of keeping money in his custody, without entry in the accounts, was the consequence of an oversight only.

" A perusal of the civil judge's and the magistrate's proceedings, however, shows that this is by no means a solitary instance of misconduct discovered to have taken place on the part of the prisoner, and such an explanation cannot, under the circumstances, be accepted as exculpatory.

" There is no sufficient reason for interfering with the sentence passed on the prisoner. The appeal is, therefore, rejected."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

PETUMBER CHOWDHRY (No. 9), OOMAKANTH ALIAS OOMANATH CHOWDHRY (No. 10), MADHUB CHUNDER CHOWDHRY (No. 11), SURRUT CHUNDER CHOWDHRY (No. 12), POORMONAUND CHOWDHRY ALIAS PETUN CHOWDHRY (No. 13), RAMKOMUL CHOWDHRY (No. 14) AND POORNO CHUNDER CHOWDHRY (No. 15).

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Sentence of the sessions court affirmed by Nizamut Adawlut.

CRIME CHARGED.—1st count, Nos. 9 to 14, resistance of process in tumultuously assaulting and forcibly rescuing from the hands of the police an absconded offender named Poorno Chunder Chowdhry, and committing an assault upon Nobin Chunder Mookerjea, darogah, and Ram Singh and Ramhurry Singh, burkundauzes, of thanna Juggernath Diggee, while in the discharge of their duty; and 2nd, accomplices in the above; and No. 15, instigating resistance of process and causing himself to be forcibly rescued from the hands of the police, and directing an assault to be committed upon Nobin Chunder Mookerjea, darogah, and Ram Singh and Ramhurry Singh, burkundauzes, of thanna Juggernath Diggee, while in the discharge of their duty.

CRIME ESTABLISHED.—Nos. 9 to 14, resistance of process in forcibly rescuing Poorno Chunder from the hands of the police, and committing an assault upon police officers, and No. 15, instigating the above.

Committing Officer, Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. Stainforth, sessions judge of Tipperah, on the 21st October 1851.

Remarks by the sessions judge.—" Kalee Singh, (witness,) informed the police of thanna Juggernath Diggee, that Rammanick and Poorno Chunder (No. 15,) accused persons, who had evaded seizure, were at their houses.

" The darogah went accompanied by burkundauzes and with aid furnished by the zemindar, to apprehend them; and he reported that they had been arrested, but that they had been rescued, and he, the darogah, wounded, &c.

" Nine eye-witnesses have given evidence on the part of the prosecution, *i. e.*, the darogah, two burkundauzes, three persons furnished by the zemindar, and two chowkeedars, who also accompanied the darogah.

" The evidence of these persons is that the darogah and his party, early in the morning, surrounded the house of Poorno

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Chunder, who threw the back door of his house upon Ramhurry Singh, burkundauz, and endeavoured to escape, but that he was caught by the burkundauz; that he resisted, and the people of his house pulled him into it; that he then tried to escape by the front door, but was seized by Ram Singh burkundauz, and shouted out, when the other prisoners came up armed with clubs, assaulted the police and the darogah so severely, that the former became senseless and blood flowed from his body, and rescued Poorno Chunder.

"The prisoners denied guilt throughout. Petumber (No. 9,) stated before this court, that when about 10 *ghurries* of the night remained, the darogah, &c., attacked his *baree*, when he and others came out and said that Poorno Chunder was not within, but that the darogah, ' notwithstanding, searched it without finding the person sought, and beat the prisoners, and that this case had been made up in anticipation of a complaint against the police.

"He produced two witnesses in exculpation. These said that hearing shouting they went to the prisoner's house, and saw the darogah sitting by it, that they staid there till morning, and then went away without seeing any assault.

"It is observable that there is a variation in the evidence of these witnesses from the statement of the prisoner, in that they have not deposed to the police beating any one, and that they do not appear to have perceived any outrage to cause the shouting which brought them to the prisoner's house. Under these circumstances, I place no reliance in the evidence of these witnesses.

"Oomakanth's defence before this court was a plea of *alibi*, he asserting that three days before the occurrence, which is the subject of this trial, he went from his home to Doorgapore, stayed there three days, came on the fourth to the house of Ramlochun Ghose in Comillah, stayed there three days, and went home next day.

"He adduced five witnesses to substantiate his plea of *alibi*, one of them, Ramlochun Ghose, his brother-in-law, and Muddun Mohun Pal, a dependant of Ramlochun, gave evidence in support of it, stating that the prisoner was at Ramlochun's house from the evening of the 19th Bysakh to the afternoon of the 21st idem, (the crimes charged having been declared to have occurred on the 19th Bysakh.)

"The evidence of these witnesses set forth that they know the dates from account kept by Muddun Mohun of the food consumed in Ramlochun's house, and the names of the persons who consumed it. Ramlochun's evidence then depends solely on the truth of the accounts, and is worth as much as hearsay evidence would be worth, *i. e.*, nothing, and I do not conceive

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Muddun Mohun's testimony to be worth more, seeing that he is not only a pupil of Ramlochun, a *mookhtar*, the relative of the prisoner, but I observe, that the accounts are themselves suspicious, as the last sheet of paper, on which the account of the 20th and 21st of Bysakh, &c., is written, is of different size and appearance to the rest. Moreover, the evidence of these witnesses does not agree with the prisoner's statement, he having declared himself to have been at Ramlochun's house four days, while the witnesses say he went away on the third day.

"Of the other witnesses, two could not speak to dates, and one declared himself to have seen the prisoner at Ramlochun's house, on the 16th Bysakh.

"Clearly the evidence of his witnesses has not substantiated Oomakanth's plea of *alibi*.

"Madhub Chunder (No. 11), Surrut Chunder (No. 12) and Poormonaund (No. 13), made statements similar to that of Petumber, and they adduced two witnesses, whose testimony is similar to the testimony of his witnesses.

"Ramkomul Chowdhry's defence is that he went on the 15th of Bysakh to the house of his brother-in-law in Daoodkandy, a day's journey from the place of the occurrence, and came home in Jeyt.

"He adduced two witnesses to prove this; of these, one has sworn that he saw him from the 16th to 20th, and the other from the 16th to the 30th Bysakh at his brother-in-law's house; but these witnesses could give no good reason for recollecting the dates, indeed, the reason given only serves to illustrate the falsehood of their depositions.

"Poorno Chunder pleaded *alibi*, but adduced no witnesses.

"The *cazee* has found Petumber Chowdhry, Oomakanth Chowdhry, Madhub Chunder Chowdhry, Surrut Chunder Chowdhry, Poormonaund Chowdhry and Ramkomul Chowdhry guilty of resistance of process, in being accomplices in rescuing Poorno Chunder, with assault upon the police; but it appears to me that they are guilty as principals.

"He has further found Poorno Chunder Chowdhry guilty of instigating the above crime, and in this conviction I concur.

"I saw no ground for making any difference in the punishment of the prisoners, but holding Petumber Chowdhry, Oomakanth *alias* Oomanath Chowdhry, Madhub Chunder Chowdhry, Surrut Chunder Chowdhry, Poormonaund Chowdhry and Ramkomul Chowdhry guilty of resistance of process, in forcibly rescuing Poorno Chunder from the hands of the police, and committing an assault upon police officers when in the discharge of their duty, and Poorno Chunder Chowdhry, of instigating the same (after return of the record of the case with the Sudder Court's Resolution, No. 1119, of the 11th October 1851,) have

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sentenced each to two (2) years' imprisonment, with labor, commutable to a fine of one hundred (100) rupees."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The justness of the convictions in this case is not, I think, open to question. The prisoners on appeal rely on their *alibis*, but I concur with the sessions judge in rejecting them. I see no reason to interfere with the sentences."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

TORAB (No. 1), WORAB (No. 2), MUSST. JUMEAH (No. 3) AND MISRI LALL (No. 4).

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The Nizamut Adawlut, dissenting from the opinion of the sessions judge, held that the offence with which the prisoner stood charged amounted to culpable homicide and not to murder. The court deeming the evidence to the injuries inflicted by the prisoner being the actual cause of death to be unsatisfactory, convicted the prisoner Torab of an aggravated assault, and acquitted the other prisoners charged with concealment of murder, and two on a second count, with collusion and fraud.

The court remarked on the impropriety of admitting hearsay evidence into the record.

CRIME CHARGED.—Prisoner No. 1, 1st count, wilful murder of Musst. Libeah, the widow of Mungle Butcher, who was brother of Torab and Worab, prisoners; 2nd count, culpable homicide of Musst. Libeah, aforenamed. Prisoners Nos. 2 and 3, 1st count, accessaries after the fact of the murder of Musst. Libeah, aforenamed; 2nd count, privity to the murder of Musst. Libeah, aforenamed; 3rd count, concealment of murder of Musst. Libeah, aforenamed, who died in their house from violence received as they were well aware. Prisoner No. 4, 1st count, concealment of murder of Musst. Libeah, aforenamed, knowing her to have been killed by Torab Butcher; 2nd count, conspiracy with Worab prisoner in giving a false report of the cause of death of Musst. Libeah, aforenamed, *viz.*, from sickness, supporting his false report by false evidence, that he by force and fraud obtained; 3rd count, fraud and oppression in obtaining forcibly the signature of Brij Mohunlal, mohurir, and Mohun Singh, jemadar, to the papers of investigation ten or eleven days after such investigation, and in not signing them himself, although he himself made the investigation, his purpose being to conceal the part he had taken in the transactions, the signatures of these two officers having been compulsory and only required when the magistrate of Patna (officiating) sent for the papers; 4th count, fraud, in causing such signatures ten or eleven days after the papers had been signed by Mr. Harris, cantonment joint magistrate, and after the order to file the papers in the *serishta* had been given and signed by that officer.

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Committing Officer, Mr. W. T. Tucker, officiating magistrate of Patna.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 11th December 1851.

Remarks by the sessions judge.—" The reason of this reference is my differing in opinion with the law officer upon the guilt of the prisoners, as will be seen in the subsequent part of this letter.

"The following is an abstract of the depositions.—*Wuzeer* Bhistee deposed that he saw Torab strike a woman on the head and loins about 10 o'clock in the day near the *dokan* of Phukkoo with the *puttee* produced in court, and she fell and blood flowed from her head. He afterwards saw the chowkeedar, whom he had accompanied part of the way to the kotwallee, speaking to the darogah, and informing him of what had occurred.

"*Zungeer Buksh*, duffalee, deposed that he saw Torab strike Libeah, whom witness knew, with a *puttee*, on the head; she fell, her head was broken and blood flowed. This *puttee* in court is the one.

"*Fukeerun's* evidence is contradictory. She first said distinctly that she saw Torab strike Libeah with the *puttee*, but afterwards, on cross-examination as to whether she saw the *puttee* in Torab's hand, she said she heard the two quarrelling, being herself within her dwelling, and on people exclaiming that Torab had killed his *buhoo*, she went out and saw that it was so and the woman was lying on the ground.

"*Soopeea*, related to Torab and Worab, also gave contradictory evidence, first saying that Torab had struck Libeah with the *puttee*, and that she saw him strike with it, and afterwards saying that she had not seen him strike at all, (*'martee bhee 'nuheen dekha,'*) but that when she went near and saw the woman lying on the ground, she was told that Torab had struck her.

"*Peroo* deposed that he saw Libeah, whom his mother, the witness Fukeerun, told him Torab had beaten, lying bleeding and insensible in the court of witness's house; he saw Torab, he said, at Phukkoo's *dokan* at that time.

"*Ameena* also deposed that she had seen deceased lying on the road, afterwards in a *palkee* in which Jumeah was taking her away insensible, and heard from the bye-standers that the brother-in-law had beaten the sister-in-law.

"*Phukkoo* Butcher, who lives in Marshall's Bazar, close to Jeetoo's, deposed that he left Libeah at Jeetoo's house and Torab on the road in front of it quarrelling and giving one another abuse, and that on his return he saw a crowd of people on the same spot, Libeah lying bleeding, speechless, insensible in the lap of Jumeah, the prisoner, who held the *puttee* produced in court, which belonged to witness, and saw Torab had struck

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her on the head with it; that Jumeah took the deceased away, and he heard, some seven or eight days afterwards, that she was dead.

"*Chedee* saw Libeah lying at Jeetoo's shop wounded on the head and bleeding. He overheard Torab forbid Shahbaz Khan to report the occurrence.

"*Sulabut Beg* saw Libeah lying in Worab's house insensible, with a wound on her head, Jumeah, who had called him to see her, asked how the blood might be stopped.

"*Hoseini*, of Marshall's Bazar, heard of the occurrence the same day.

"*Mahomed Ali Shah* proved that Worab buried the body in the premises attached to his '*tukeea*,' saying the kotwal had inquired and permitted the burial.

"*Shahbaz Khan* proved reporting the occurrence of the beating at the kotwallee to the kotwal, the prisoner Misri Lall.

"*Michael Quin* proved seeing the deceased insensible from a wound on her head in Worab's house, when Jumeah, prisoner, said it had been inflicted by Torab, also his having told this to Misri Lall when he came to inquire.

"*Chekowree Dhobee* deposed to finding Libeah's wearing apparel bloody when sent to him to be washed.

"*Ramzoo* witnessed the funeral.

"*Koonkoon* witness to the rumour that Torab had killed his *buhoo*.

"*Jeetoo* ditto, ditto.

"*Brij Mohun* denied having made the inquiry represented in the *kyfeut* paper No. 6. in the magistrate's list, but admitted having accompanied the prisoner, Misri Lall, as was customary. He made it, but made witness sign it by using threats several days after it had been presented to, and had received the signature of the joint magistrate.

"*Mohun Singh*, jemadar, also disclaimed the said paper as having been drawn up and the inquiry as having been conducted by him, declares that Misri Lall conducted it, but made him sign it by threats after it had been sent in to the joint magistrate.

"*Puchkowree*, Duffalee, and *Kuntoo*, Chumar, both declared that they had told Misri Lall that they had heard the woman died in consequence of being beaten by Torab, and that Misri Lall was angry and desired them to say she died from ill-health.

"*Tofanee*, Chowkeedar, states that he was present with Misri Lall when that prisoner made the inquiry in Orderly Bazar, and that the witnesses in his presence all said that the woman died of fever and ague. This witness, however, although he admitted his own signature on the *izhar* of Tofanee, Chowkeedar, dated 11th October, persisted in ignoring the said

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deposition, which was the information in the case. He deposes also to the extortion of the signatures.

"*Dhooparee*, Chowkeedar, proves the last-mentioned fact.

"*Hingun* and *Mungle* deposed that Misri Lall had forcibly made them witnesses, by touching the pen, to the *kyfeut*, whereas they had not heard the witnesses nor had their statements been read out to them.

"*Heera Singh* deposed that the prisoner, Misri Lall, had sent him and the mohurir, &c., to Orderly Bazar, where they apprehended Worab and took him to Mr. Harris, who, the kotwal said, ordered the grave to be opened. Witness denied that he was one who, as the *kyfeut* purports, conducted the inquiry, and states that it was conducted by Misri Lall, whom witness advised to exhume the body, but he did not think it right to do so. He also deposes to Misri Lall having appointed him afterwards to make inquiries through spies.

Ali Hussin, nazir, and *Wuzeerooddeen*, darogah, proved the exhuming of the body of Libeah.

"*Sheo Churn Lall*, *Achunbit Lall*, *Fakeera* and *Hurbuns* proved the identity of the corpse.

"The darogah and nazir aforesaid, also proved receiving the *puttee*, or part of the bed frame, present in court from Phukkoo, the witness.

"In his defence, Torab, prisoner, endeavoured ineffectually to establish a cause of enmity between him and Zungeer Buksh, one of the witnesses against him, and urged the bad character of the informer. The prisoner, Worab, stated that the deceased was buried by him publicly, and that an inquiry had been made by the witnesses, Brij Mohun, Mohun Singh, &c., which showed that she died of fever. The prisoner Jumeah urged that Libeah wounded herself, and that the prisoner was ill at the time. And the prisoner Misri Lall, urged that the darogah and nazir, who conducted the inquiry, out of enmity and from interested motives, such as a wish to procure the prisoner's appointment for a *confrere*, had gained over the witnesses to misrepresent the circumstances; that Brij Mohun, Mohun Singh, Tofanee and Dhooparie, from spite and self-interest, had deposed falsely; that he was not at the kotwallee when Shahbaz Khan says he informed him of the violent assault on Libeah, that Brij Mohun and Mohun Singh both signed the report of the inquiry at the time it was made, and that what he did, he did by order of Mr. Harris, the joint magistrate.

"The witnesses examined by prisoner Torab, gave him a good character, and said though inhabitants of the neighbourhood, they had not heard of Libeah having died from any injury she had received.

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"Most of the witnesses examined by Worab speak to the same purport for him; one of them, Ameerun, is the woman whose evidence was embodied in the *kyfeut*, which is the subject of some of the charges against Misri Lall. Another, Manoollah, denied that he had stated, upon occasion of the inquiry made by the darogah of Bankipore as contained in the report, *viz.*, that it was notorious that Torab had beaten the deceased, instigated by her improper intimacy with *Zungeer Buksh,* duffalee. Another witness, named Budloo, called by the prisoner Worab, states that he was accidentally passing when the inquiry at Orderly Bazar was going on, and gives an account of that inquiry, and of the statements of the witnesses most favorable to the prisoners.

"On the part of the prisoner, Misri Lall, Gunesh Lall, his private writer, Boolakee, a tailor, who says he was working at the *chubootra* for the kotwal, and his *amla,* Purgin Singh, a chowkeedar, and Rajput Pande, naib jemadar, attached to the Abkaree establishment under Mr. Harris, Jha, syce, and Neamut, coachman, who say they attended and drove the hired equipage in which Misri Lall rode to the Orderly Bazar, and Jhumun Singh, a passer by, all declare that the inquiry was conducted by Brij Mohun and Mohun Singh, though the kotwal was in attendance; that the witnesses said nothing, but that the woman died of fever, and that the witnesses and the said Brij Mohun and Mohun Singh signed their names, or touched the pen, in token of witnessing or authenticating the papers then and there.

"I cannot believe the witnesses who speak to these facts, were they all equally competent witnesses with those who gave the depositions at Orderly Bazar, which it is plain they cannot be. Gunesh Lal, being the private amanuensis of the kotwal, is an interested person, and was acting under no responsibility. The very fact of this person having written the *kyfeut* in question is cause for suspicion, and his way of accounting for this, *viz.*, that Brij Mohun, whose province of course it was to write, wrote so bad a hand, that he was rarely employed to write, is exceedingly lame.

"All persist in saying that Brij Mohun and Mohun Singh, jemadar, conducted the inquiry, which is absurd, when the head officer was himself in attendance. Besides, the statement of Gunesh Lall that Mr. Harris gave orders to Brij Mohun and Mohun Singh to conduct the inquiry is contradicted by the evidence of that officer, who says the kotwal came to him unaccompanied by the others and reported, and to him he gave his orders.

"That the tailor and Rajput Pande should have gone to the spot, to the neglect of their own business and duties, for the express purpose of witnessing the inquiry, cannot be believed.

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It is possible that the kotwal, having in the first instance deputed the mohurirs, &c., to make the inquiry, did send Rajput, though not an officer of his own establishment, to see how matters were progressing, but that after this witness had been twice sent to and fro with messages, the last being to take the mohurirs with Worab to the joint magistrate, he should have been sent a third time merely to attend the inquiry, which was afterwards made, he having no concern or connexion with the police and without any specific object, is not credible. The witness to the *alibi* pleaded by this prisoner did not establish it.

"It is, in my opinion, established by the above evidence and that of the civil surgeon, that Torab, in the course of a quarrel, struck the deceased, Libeah, a blow on the head with a piece of the bedstead, weighing two and a quarter seers,* which caused her death about seven days after. There appears to have been provocation, for the deceased had given him foul abuse and would not desist when the witness, Soopeea, remonstrated with her. However, the formidable nature of the weapon, the severity of the injury, showing with what effect the blow had been dealt, and the place of the wound, *viz.*, the side of the head, an unmistakeable indication of the intention of the prisoner to kill. He is, therefore, convicted of wilful murder.

"It is also established that Jumeah well knew that Torab had inflicted the wound on the deceased's head, for she is proved to have taken away the wounded woman from the spot where she was wounded and from among a crowd of people whom the disturbance had collected. Neither can Worab, her husband, have been ignorant, as Libeah continued in her house to the day of her death. Neither prisoner gave any information to the authorities; on the contrary, Worab represented that an inquiry had been made and permission given by the police for the burial of the body, and caused it to be buried. They are, therefore, clearly guilty of concealment of the murder.

"It is established by the evidence that Misri Lall received a report of the aggravated assault committed by Torab upon Libeah, and made no inquiry into it; that when Tofanee Chowkeedar reported the death of Libeah to him as the consequence of such violence, he took no immediate steps to prevent the body from being buried, deputing his mohurir instead of going himself to the spot to prevent it, and make an inquest; that when ordered by the joint magistrate, his superior, to attend the inquiry in person, he concealed the real circumstances, permitting his private writer to write the report, and prohibiting the statement of some of the witnesses, *viz.*, that they had heard the woman died from

* Three feet and a quarter inch long; two and a quarter inch broad; one and a half inch thick.

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the effects of violence, being recorded; that he presented such false report to the joint magistrate; that he caused such report to be made out falsely as having been conducted by Brij Mohun and others and compelled him and Mohun Singh, by intimidation, to sign it, many days after the said report had been submitted to the joint magistrate, and that against the advice of Heera Singh jemadar, he neglected to exhume and examine the body. Thus he is proved guilty, 1st, of concealment of the murder of Libeah.

"Collusion with Worab prisoner in making a false report of the cause of the death of Libeah.

"Fraud, in obtaining by intimidation the signatures of Brij Mohun and Mohun Singh to the reports of the inquiry after they had been submitted to the joint magistrate, and in not signing them himself, notwithstanding that he conducted the inquiry.

"The punishment to which I think the prisoners ought to be sentenced remains to be stated.

"It appears from the evidence that the fatal blow was struck by Torab in the course of a quarrel between the parties, attended with mutual abuse. No doubt he must have acted under considerable provocation, which, though not sufficient to reduce the heinousness of his guilt to anything less than wilful murder, still in my opinion extenuates it in some slight degree, sufficient to make him an object for a mitigated sentence, I therefore recommend that he be transported for life.

"Worab is, I think, deserving of two (2) years' imprisonment, and a fine of one hundred (100) rupees, or to labor in lieu of the same, for, although the murderer was his own brother, yet the murdered woman was his brother's widow and the sister of his own wife, so that he can hardly plead the claims of relationship if such a plea could be considered in mitigation. Jumeah also can urge nothing in this way in extenuation, as Libeah was her own sister. The dependant and secluded condition, however, of women in this country, particularly of the Mussulman religion, is such that the mere neglect to give information to the authorities, which is all that is proved against Jumeah, cannot be considered guilt of a very deep die in her. The family was in comfortable circumstances, and many of the witnesses for the defence state that this prisoner was not in the habit of appearing in public unveiled. The requirements of justice would, I think, therefore, be satisfied by a sentence of three (3) months' imprisonment, and a fine of fifty (50) rupees in regard to her.

"With regard, however, to the prisoner, Misri Lall, his guilt is aggravated by the gross dereliction of duty, which is involved in it, and by the abuse of his powers and the fraud to which he had recourse in order to cover it, I think seven (7) years' imprisonment with labor would not be too severe a punishment for him.

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"It becomes my duty now to remark on the proceedings of the joint magistrate, under whose orders this prisoner acted, as disclosed in the course of this trial. They indicate a degree of inexperience in that officer which is to be lamented, as it seems to me to have emboldened the kotwal to take advantage of his position to do wrong. Mr. Harris admits in his evidence that it was not considered customary that the kotwal should personally conduct inquiries into such police matters as the present. It was more within the province of his mohurir to do so, so that Mr. Harris considered it right to direct him only to attend the inquiry made by the mohurir, who, in fact, it appears, from the report being made out in his name and those of the jemadar and chuprassees, would be with them, the officer held responsible. It is difficult to understand what Mr. Harris can have considered to be the province of the kotwal, when the mohurir was thus held responsible for the proper performance of some of the most important duties of the head officer of police.

"A second proof of the inexperience of Mr. Harris is his admission that it was with his sanction that the kotwal employed Gunesh Lall to assist him in his public duties, an unpaid and irresponsible person in the capacity of writer. By this man, whom his evidence shows to be a shrewd, designing person, the report in question in this case was drawn up. This practice was no doubt not known by Mr. Harris to be prohibited by the Regulations.

"There seems to have prevailed in the joint magistrate's office, and in that of the kotwal under him, a mutual confusion of duties which must be attended with disadvantage, to say the least. The kotwal, if I understand Mr. Harris aright, acts as his writer when he is acting as superintendent of the Sudder Bazar, in which capacity it would appear he hears the police reports, until a final order is passed on it, may be the kotwal's own report; the kotwal takes it and the papers which may have been added to the record to his own office, the kotwallee. When a final order is passed, the papers are put into the record office attached to the joint magistrate, or superintendent's own office, but, strange to say, the kotwal's mootsuddee is the officer who has charge of the records there deposited. I suspect Mr. Harris does not clearly understand the nature and extent of his powers as superintendent of the Sudder Bazar. He seems to consider it and to keep it a distinct office from that of the joint magistracy, for which I should imagine there is no ground or necessity.

"Mr. Harris is not by any means wanting in ability and in any of the qualifications for the efficient performance of a magistrate's duties, with the exceptions above noticed, but he should be admonished to make himself better acquainted with the Re-

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gulations and Laws which govern the procedure of the magistrate's courts and to consult the magistrate as to the proper mode of allotting the duties of his establishment and of conducting those of his own office.

"The magistrate should also be directed to ascertain that every thing is done according to the prescribed course in this joint magistracy, and to point out to Mr. Harris any irregularities which may, through the want of experience, have prevailed.

"A copy of the remarks contained in paragraphs 43 to 48, will be forwarded to the Superintendent of Police for any orders he may deem to be called for with reference to what I have said on this subject."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I have attentively considered the papers of this case, and the argument urged in behalf of the prisoners by Mr. Peterson, an advocate of the Supreme Court, and Mr. Norris, a pleader of this court, and am of opinion that though the evidence is sufficient to justify the conviction of the prisoner Torab of an aggravated assault, yet it fails to satisfy me that death actually ensued from the injuries inflicted by the prisoner; but even admitting that Musst. Libeah died in consequence of the injuries received, I am of opinion that the case does not amount to murder. The assault was suddenly committed, upon grave provocation; the instrument was at hand, and a single blow was only struck. These circumstances, in my judgment, extenuate the murder to aggravated culpable homicide.

"The evidence to the prisoner striking the deceased with a cot-post, which felled her to the ground, is clear and convincing, and is corroborated by the testimony of other witnesses, who depose that they saw the deceased lying on the ground and blood flowing from a wound on the head, and that she was taken away to the prisoner Worab's house in the Orderly Bazar in a dooley.

"The medical evidence proves that there was a fracture on the skull on the top and left side of the head, extending round the frontal bone from the right to the left parietal bone, and there was *apparently* a wound on the scalp corresponding with the fracture of the skull. In reply to a question put by the sessions judge as to whether he could state positively that the fracture was made during life, he stated—'From the decomposed 'state of the body there was nothing to guide me, but from the 'appearance of the edges of the fractured bone, I was led to 'suppose that the wound, or at least a very great portion of it, 'was inflicted before death, for the edge showed a reddish 'appearance, which I conceive would not have been the case had 'the injuries taken place after death. The fracture might have 'been extended by burying and disintering the body.' This evidence is by no means conclusive; and when it is considered

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with the fact of the murder having been brought to light by an informer, of the body being exhumed at night in the presence of the informer, and not in the presence of the accused, of its being left exposed to the weather all night, and of no precaution having been taken by the police to guard against its being tampered with, there are, I think, reasonable grounds for the suspicion suggested by the prisoner's counsel that the fracture may have been occasioned by violence, accidentally or designedly done in the exhumation. This suspicion is rather strengthened by the *post mortem* appearances. The cut, 'as far as the surgeon could 'make out,' corresponded with the fracture of the skull. The weight of the blow on the side of the head might, he says, have fractured the frontal bone from side to side; but it could not I think, have caused a bursting of the flesh all round, as I infer was the case. Further, the fact of the deceased living six or seven days after the injury was received, though it is not shown in what state she remained, seems irreconcilable with the statement of the surgeon, who was of opinion that the wound on the skull was such as must have caused 'almost immediate death' if it had been wholly inflicted during life. For the above reasons I cannot bring myself to the conclusion that the fracture, described by the surgeon, was inflicted during life, and was the actual cause of death; and without the strongest presumptive proof that the injuries inflicted by the prisoner caused death, I do not think it would be safe to convict him of the homicide. I convict him of an aggravated assault, and sentence him to two (2) years' imprisonment with labor, if not redeemed by the payment of one hundred (100) rupees fine.

"The evidence against Worab and Musst. Jumeah only proves that they gave succour to the wounded person. It is not shown that they were present when the assault was committed. The charge of murder having fallen to the ground, they must of course be acquitted of concealing the same. For the same reason Misri Lall must be acquitted of a like charge. He is further found guilty of collusion with Worab in making a false report of the cause of the death of Libeah, and of fraud in obtaining, by intimidation, the signatures of Brij Mohun and Mohun Singh to the reports of the inquiry after they had been submitted to the joint magistrate, and in not signing them himself, notwithstanding that he conducted the inquiry. There is no evidence to prove collusion, or that he was influenced by relationship or lucre to make a false report. Brij Mohun and Mohun Singh were his subordinates. Seeing that their superior had been found fault with, they repudiated the part which they took in the inquiry, in order to save themselves. I can put no credence in their statements that they were intimidated to sign the report. I acquit the prisoner, Misri Lall, of the above

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charges. That the prisoner was, however, guilty of gross dereliction of duty in neglecting to make a proper inquiry into the case, and to exhume and examine the body, is manifest, but this is an offence which is cognizable by the magistrate, and can be dealt with by him.

"The sessions judge has improperly admitted a good deal of hearsay evidence in this case. He should not record evidence which is not admissible, as it tends to create impressions in the mind of the judge unfavorable to the prisoner."

PRESENT:

A. DICK, ESQ., *Judge.*

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

MEER BUDHOO.

1852. February 10. Case of MEER BUDHOO.

Prisoner convicted of deliberate murder of his wife, on violent presumption of the strongest kind corroborated by his admission of guilt before several witnesses, and sentenced to suffer death.

CRIME CHARGED.—Murder of Musst. Chand, wife of prisoner.

Committing Officer, Mr. A. Forbes, magistrate of Pooree, Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 14th October 1851.

Remarks by the sessions judge.—"It appears that on Friday night, the 5th September last, the prisoner Meer Budhoo, with his wife Musst. Chand, and their three children, slept or retired to rest as they had done for some months previously in consequence of the prevalence of cholera and the proximity of their own house to a burial ground, in one of the houses of Munoo Khan, the prisoner's uncle, witness No. 1, and that he, the said Munoo Khan, having got up about 3 o'clock in the morning, and gone out of his house to make water, heard some one groaning in the house in which the prisoner and his family were, called to the prisoner to ascertain the cause, and receiving no answer, he then called to Meer Hosenee, the prisoner's son, a boy of nine years of age, who opened the door and told him that his father had killed his mother; and the prisoner having then passed out at the door with the intention of absconding was apprehended by the said witness, to whom he admitted he had killed his wife; that Munoo Khan then called for the assistance of his neighbours, who having come procured a light and entered the apartment in which the prisoner and his family slept, and there found Musst. Chand weltering in her blood, and her two younger children sleeping by her side, and after seeing this they sent for the chatteah, or chowkeedar, who caused

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the prisoner to be bound, and communicated intelligence of the murder to the surburakar of the village and to the police darogah, the latter of whom arrived at the spot at 10 o'clock the same day, and after inspecting the body of Musst. Chand, which presented several severe stabs of a knife, which was found lying on the bed or litter by the side of the deceased, forwarded it to the sudder station, and proceeded to investigate the case.

"The witnesses, Nos. 6 to 11, all corroborate the statement of witness No. 1, relative to his apprehending the prisoner, and their having gone to the house on hearing him call out for assistance, and their having seen the body; and they all, with the exception of witness No. 7, (who states that he heard him say nothing on the subject,) depose that the prisoner, on their arrival at the house, admitted having killed his wife. Witnesses Nos. 7 to 11 also depose to having previously seen the prisoner carrying about the knife which was found lying by the side of the deceased.

"Witnesses Nos. 2 and 3 depose to the wounds on the body of the deceased; and witnesses Nos. 4 and 5, having been sent up to give evidence to the same point, were not examined.

"The prisoner pleaded 'not guilty' before this court, in like manner as he had done before the police and the magistrate, and indirectly tried to cast suspicion on, though he would not actually accuse, his step-brother, Sheikh Panchoo, with having killed his wife, Musst. Chand. He also stated before the magistrate and this court that he was awoke out of his sleep on receiving two wounds, one on his left knee and the other on his left hand, inflicted by the person who killed his wife, but he admitted before the lower court, that after he was awoke, he told his son Hosenee to open the door of the house in which he was, which was fastened in the inner side, and let in Munoo Khan who apprehended him.

"The *futwa* of the law officer convicts the prisoner Meer Budhoo of the wilful murder of his wife Musst. Chand on violent presumption, and declares him liable to punishment by *akoobut*, or imprisonment, and entertaining no doubt of the prisoner's guilt, I fully concur in his conviction; but conceiving, from the circumstances of the case, *viz.*, the numerous severe stabs inflicted on the head and body of Musst. Chand with so deadly an instrument as a knife, (which more resembled a small dagger than an ordinary knife,) and the fact of their having, in all probability, been inflicted when the deceased was fast asleep and unconscious of any injury being about to be perpetrated towards her, for she was not heard to utter any shrieks or cries, I consider that he has justly incurred the severest penalty of the law, and I leave it to the decision of the court, whether my opinion or that recorded in the *futwa* is the correct one. I was unable to elicit from the witnesses the cause by which the pri-

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soner was actuated to murder his wife; but it is to be inferred, from his own examination and that of Munoo Khan, witness No. 1, before the police darogah, that he was instigated by feelings of jealousy, having supposed that she was in the habit of intriguing with Sheikh Panchoo above referred to.

"The wound on the back of the left hand and knee of the prisoner had entirely healed up before the trial, though the scars of them remain as recorded in a separate paper, page 26, and it appeared that they might have been and probably were accidentally inflicted by the prisoner himself while stabbing his wife; the wounds were both slight, that on the back of the left hand was apparently superficial and ran in an oblique direction between the thumb and four finger, and the other on the leg being on the inner part of the knee.

"As connected with this trial, I beg to submit for the Court's orders the annexed copy of a letter*, No. 193, of the 20th October, received from Mr. Forbes, the magistrate of Pooree, in reply to the orders communicated to him by me in my *roobukaree* of the 14th idem, filed with the record, informing him, with reference to the court's circular order, No. 1, of the 1st February 1828, (more especially the 5th paragraph thereof,) that he should have summoned Sheikh Hosenee, the son of the prisoner, who

* The following is the magistrate's letter referred to and the Court's orders upon it.

From the Magistrate of Pooree, to the Sessions Judge of Cuttack, No. 193, *dated* 20*th October* 1851.

"With reference to your proceedings, dated 14th instant, held on the trial of Government *versus* Meer Budhoo, for the murder of his wife, calling my attention to the Circular Order of the Nizamut Adawlut, No. 1, dated February 1st 1828, I have the honor to request that you will do me the favor to solicit the instructions of the Court regarding the course that the magistrate is to pursue when he considers a child too young to be examined at all in a judicial investigation. It appears to me that the Circular Order in question is inapplicable to this case, and that the only course left for the magistrate to pursue, is to record his opinion that the child is too young to be examined at all."

Extract Paras. 5 *to* 7, *from a letter to the Sessions Judge of Cuttack, dated* 10*th February* 1852.

"With reference to your last paragraph, the Court desire me to state that the magistrate should have summoned the boy Hosenee, the son of the prisoner, but as he caused the attendance of the boy at your court, you should have proceeded as described in Section IV. of the Circular Order of the 1st February 1828.

"With advertence to the magistrate's letter to your address of the 20th October last, No. 193, the court direct me to observe that it is not enough for a magistrate to act on his mere opinion, without recording the queries and answers which led him to form that opinion. See paragraph 4, Circular Order above referred to.

"In the present case the magistrate should have proceeded under paragraph 5 of the above Circular Order."

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opened the door of the house in which Musst. Chand, his mother, was murdered, to let in the witness Munoo Khan, and have ascertained whether he was capable of understanding the nature and obligation of an oath or not, and that if he pleaded ignorance on the subject, and the magistrate was of opinion that the oath ought not to be administered to him, he should have recorded in detail his reasons for so thinking. The court's instructions appear to me to be full and clear on the subject, nevertheless, as requested by Mr. Forbes, I submit his letter."

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and A. J. M. Mills.)—Mr. A. J. M. Mills.—"The evidence for the prosecution, which is in no way impeached by the prisoner and which there are no grounds for doubting, affords violent presumption of the prisoner's guilt. The testimony of the witness, Munoo Khan, rebuts the possibility of another being the murderer, and I believe the prisoner's story to be a pure invention. The motive to the commission of the murder is not elicited: probably it was jealousy, as suggested by the sessions judge, the existence of which was either unknown to the villagers, who are all Mahomedans and more or less connected, or, what is more likely, was concealed by them from feelings of family honor. The deceased was far advanced in pregnancy and was brutally murdered. The number and nature of the wounds evidence a deliberate intention to kill her. I see no reason to pass any other than a capital sentence."

Mr. A. Dick.—"The *futwa* of this court, as well as the *futwa* of the sessions court convicts the prisoner on violent presumption, *ghalib-oo-zun*, and both declare him liable to *akoobut*, discretionary punishment. The sessions judge should have called for a second *futwa* as enjoined in Section II. Regulation LIII. of 1803. Let a second *futwa* be called for from the *mooftee* of the Nizamut."

Mr. Dick's Second Minute.—"The second* *futwa* of the *mooftee* of the Nizamut declares the crime proved against the

* *Regarding the requisition of this second futwa, Mr. Mills circulated the following note to the Court at large.*

"In the trial of Meer Budhoo for murder, Mr. Dick took a second *futwa* from the *mooftee* of the court, because it convicted the prisoner on violent presumption and declared him liable to *akoobut*, and remarked that the sessions judge should himself have called for a second *futwa*, as enjoined in Section II. Regulation LIII. of 1803.

"As the crime of murder has been specifically provided for by the Regulations, it was, I think, unnecessary for the sessions judge to call for a second *futwa* under Clause III. Section II. of the above quoted law. Moreover, the law applies to a second requisition of a *futwa* by the court of circuit, and not by the Nizamut Adawlut, which has the power of superseding the *futwa* of the law officer. As the point should be authoritatively settled, I beg to submit it for the opinion of the court."

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prisoner would have rendered him liable to *kissas*, or capital punishment, if the evidence had been direct and complete.

"In this case, the proof against the prisoner is as conclusive and indubitable as it could be in the absence of eye-witnesses to the deed itself, and a legally certified confession by the prisoner.

"It is in evidence that the deceased and prisoner with their three children slept in one apartment; that the apartment had only one entrance; that groans were heard by one of the witnesses, who lived hard by; that he called to the prisoner without effect; that he then called to the son of prisoner, a boy nine years old; that the boy opened the door of the apartment, and crying, said his father had killed his mother; that prisoner attempted to escape, admitting the murder, but was seized by the said witness, who called out for aid; that several persons came, to whom also prisoner said he had killed his wife, and that the wife was found by them dead, and weltering in blood.

"In addition to the above, the defence of the prisoner, that his brother Panchoo had murdered the deceased, is incredible. Had Panchoo murdered deceased, prisoner must have been aware of it, as he was lying by her side, and was himself slightly wounded, but its falsity is directly proved by the fact of the door of the apartment being closed, when the first witness came to inquire on hearing the groans; and this is admitted by the prisoner himself.

"I therefore concur in sentencing the prisoner to suffer death for the inhuman murder of which he is fully convicted."

Upon the above note the following Resolution, dated 27th February 1852, *was recorded by the Court:*

"Read Mr. Mill's minute, dated 20th instant, on the trial of Meer Budhoo, requesting court's opinion as to the legality, with reference to Clause III. Section II. Regulation LIII. of 1803, of calling for a second *futwa* in this court in cases of murder, where the first *futwa* may convict of murder on grounds only of violent presumption, (*ghulib-oo-zun.*)

RESOLUTION.

"The court resolve that it is not necessary for the Nizamut Adawlut to call for a second *futwa* from its law officer in cases such as is above referred to."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

RAMNARAIN SOOTAR

versus

SHEEBRAM SOOTAR.

1852.

February 11.

Case of SHEEBRAM SOOTAR.

The sentence passed by the sessions judge, on a prisoner convicted of theft, affirmed by the Nizamut Adawlut.

CRIME CHARGED.—1st count, theft, by entering the prosecutor's shop by opening the door of the same, breaking open the back of the chest, and stealing therefrom cash and property to the amount of Company's rupees 936-12; 2nd count, receiving and having in his possession stolen property, knowing it to be such.

CRIME ESTABLISHED.—Theft.

Committing Officer, Mr. E. F. Radcliffe, officiating joint magistrate of Noacolly, Tipperah.

Tried before Mr. H. Stainforth, sessions judge of Tipperah, on the 18th November 1851.

Remarks by the sessions judge.—" The value of the property stolen in this case is rupees 936-12, and nearly all has been recovered.

" The prisoner is proved to have confessed having been an accomplice in the robbery before the police and magistrate, and to have given up the property found.

" Before the court he denied joining in the robbery, and pleaded that the property was given to him by Ruttun, prosecutor's brother, but he declined the evidence of the witnesses called by him.

" The prisoner has been sentenced to five (5) years' imprisonment with labor and irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—" The prisoner has appealed. His plea, that the property was given to him by the prosecutor's brother Ruttun, and that the prosecutor bore him ill-will, is completely refuted by his confessions, which are proved to have been voluntarily made. It appears from the confessions that the prosecutor's brother was privy to the robbery. I see no reason to interfere with the conviction and sentence."

PRESENT :

A. DICK, ESQ., *Judge.*

GOVERNMENT

versus

DEEP SINGH.

1852. February 12. Case of DEEP SINGH. Prisoner acquitted of perjury. His depositions given in the sessions court, when considered and compared with his testimony in the foujdaree court, being consistent.

CRIME CHARGED.—Perjury, in having, on the 16th September 1851, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the sessions judge of Shahabad, that except Uchruj Singh, Ramsurn Singh *alias* Chumun Singh, and the other defendants he pointed to in court were seen by him with *lattees*, swords, and iron-bound *lattees* in the riot; and in having, on the 8th September 1851, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Shahabad, on a question being put to him by moulvee Behadoor Ally, the pleader of Ramsurn Singh *alias* Chumun Singh, No. 4, that Ramsurn Singh *alias* Chumun Singh, the defendant, was not present in the riot, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, officiating sessions judge of Shahabad, on the 19th November 1851.

Remarks by the sessions judge.—"On the 8th September 1851, when his deposition was first taken, he deliberately and distinctly pointed out prisoner No. 4 of that case, touching him with his hand, and positively stating that he had seen him engaged in the affray.

"His evidence was not completed on that day, and on the following, the counsel employed by this prisoner put a question to him, whether his client was present, and, in direct opposition to his former statement, he said that he was not; on being asked to explain and warned by the court, he said that if he had been asked about this prisoner by name, he should have said so the day before.

"Having no doubt whatever that this was a deliberate and intentional falsehood, (probably uttered at the suggestion of the *vakeel* employed,) I ordered his commitment for perjury. The deposition of the prisoner is attested on oath by the writer.

"The defence of the prisoner on trial is merely that he had been thrice examined.

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Case of DEEP SINGH.

"The *futwa* of the law officer convicted the prisoner of the crime charged, and declared him liable to *tazeer*."

Sentence passed by the lower court.—To be imprisoned with labor and irons for three (3) years, from the 19th November 1851.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.)

سوال سیواي مردمان مذکور الصدر باقي مدعا علیهم کو اوس هنگامه
مین دیکها تها جواب اچرج سنگه لمبوسم کو هنگامه مین نهین دیکها
تها باقي بالکل مدعا علیهم حاضرین و غیرحاضرین جنهونکا نام لیکر
پهچان کیا هی بحربه لاتهي و تلوارولوه بنده موجود تهي

"The words above transcribed are those that bear upon the charge in the prisoner's deposition of the 6th, erroneously written the 8th, in the sessions judge's abstract. The words dashed may very possibly refer to the detail the prisoner had just given of what he saw, and whom he recognised. To put this beyond doubt, the prisoner's deposition in the foujdaree was carefully read. In that, he distinctly states that there were no other persons of Narainpore present, except the four wounded, and the four witnesses. Had he therefore declared that Ramsurn Singh was present, he would have testified contrary to his testimony before the magistrate. The fair inference is then that he intended, in his answer to the question above transcribed, those present and absent, whom I have just named, as concerned in the affray, were present.

"It is further to be observed that the evidence against Ramsurn Singh, was not considered satisfactory by the Nizamut, and he was accordingly acquitted.

"The court therefore acquit the prisoner of the charge and direct his release."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

RAMJOY PAL (No. 5), SHURROOP CHUNDER DEB (No. 6 APPELLANT), NATU NAIE (No. 7 APPELLANT), BHYRUB CHUNG (No. 8 APPELLANT), MUSST. RASHOO CHUNDABEE (No. 9 APPELLANT), SHEIKH MONAH SONAR (No. 10 APPELLANT) AND RAJ COOREE (No. 11).

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Case of SHURROOP CHUNDER DEB and others.

The conviction of two prisoners on a charge of knowingly receiving stolen property, altered to a conviction of burglary, of which they had also been charged, and one prisoner acquitted by the Nizamut Adawlut, the proof of his receiving the articles with a knowledge being wanting. The convictions and sentences of the other prisoners upheld by the Nizamut Adawlut.

CRIME CHARGED.—Nos. 5 and 6, burglary, by cutting the *tattee* of the house of the prosecutor, breaking open the lock of a chest, and theft of cash and property valued at rupees 310-12. Nos. 7 and 8.—1st count, burglary, by cutting the *tattee* of the house of the prosecutor, breaking open the lock of a chest, and theft of cash and property valued at rupees 312-10; 2nd count, being accessaries before and after the fact to the above crime; 3rd count, knowingly receiving and possessing property obtained by the above burglary and theft. No. 9.—1st count, being an accessary before and after the fact to the above theft; 2nd count, knowingly receiving and possessing property obtained by the above burglary and theft, and Nos. 10 and 11, knowingly receiving and possessing property obtained by the above burglary and theft.

CRIME ESTABLISHED.—Nos. 5 and 6, burglary, Nos. 7 and 10, knowingly receiving property obtained by burglary; Nos. 8 and 9, knowingly receiving property obtained by burglary and privity to the same, and No. 11, possessing stolen property.

Committing Officer, Mr. A. Abercrombie, joint magistrate of Jumalpore.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensingh, on the 18th November 1851.

Remarks by the sessions judge.—" The prosecutor, long ago a moonsiff, was unable to attend from age and illness. A burglary was effected in his house by cutting the mats of it, and property to the value of rupees 310 stolen, and the prisoners were apprehended on the suspicion of a person on the part of the prosecutor, and the following prisoners confessed in the Mofussil and before the assistant. No. 5, (Ramjoy Pal, whose name is not entered here, as the sentence passed upon him has been postponed,) and No. 6, to committing the burglary; Nos. 7 and 8 to receiving property knowingly obtained thereby. No. 10 in the Mofussil admitted having received part of the property and buried it, and No. 11, (Raj Cooree, whose name is not entered here, as

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a reference is made to the Nizamut Adawlut regarding him in another case,) purchased of the property not knowing it to have been stolen. Various articles were also given up or found in the premises of all the prisoners. In the foujdaree, Nos. 10 and 11 denied having knowingly received the property. No. 10 is a sweetmeat seller, and from his having at different times purchased from No. 5 and another, part of the proceeds of three different burglaries, silver ornaments, broken pieces of silver parts of an idol, and from its having been concealed in the thatch of the house, there can be no doubt he knew how they had been obtained, as is also the case with No. 9, who admits having received a large silver *hunslee* from her paramour, No. 17, which she hid in a hole under a clump of bamboos. In this court No. 5 urged that he had been falsely accused, as he had a quarrel with the prosecutor's gomashta about a marriage, who had lately been charging him with burning his house; that his confession had been extorted by the police, and that a silk *saree* was not the prosecutor's, on which point some witnesses, connexions of the prosecutor, said they could not say it was; his other witnesses could not prove the enmity of his gomashta, or ill-treatment by the police. No. 6, uncle of No. 5, the same assertion as to enmity with the prosecutor's gomashta, ill-treatment by the police, who had put the property in his premises, to which, and the property being his, he named witnesses who could not prove it. No. 7 enmity with prosecutor, because he had refused to allow him to build a house on his *talook* of rupees 22 sudder jumma, (the witnesses state the income may be about that sum,) and because he knows that two persons have intrigues with the prosecutor's wife, and ill-treatment by the police, and named witnesses to character and to the property, who failed to prove the latter. No. 8 said he had before been the prosecutor's servant and knew that his wife had intrigues with two other servants, and ill-treatment by the police, and named witnesses to prove that he had been taken into a plain at night by the police, and to character, who could only depose as to the latter. No. 9 said she had been charged, because she refused to give access to the prosecutor's nephew, and that No. 7 told her he had bought the *hunslee*, and named witnesses to prove that the darogah had demanded rupees 10 from her and had taken away her brass vessels; the former, they could not prove, but said these vessels had been taken, and I have directed the assistant to ascertain what has become of them. No. 10 that he bought the articles from No. 5, whom he knew to be a respectable person, working at an indigo factory and named witnesses to character. No. 11 the same, and that prisoner No. 5 has an intrigue with his wife, and therefore ill-will towards him, which they could not prove. The *futwa* of the law officer convicts the prisoners Nos. 5 and 6 of burglary, and Nos.

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7, 8, 9, 10 and 11 of knowingly receiving property obtained thereby, in which I concurred, and have passed a severer sentence upon No. 8 than upon the other receivers, as he was at the time in the prosecutor's service."

Sentence passed by the lower court.—No. 5, seven (7) years' imprisonment with labor and irons (being a consolidated sentence for this and the two following cases.) No 6, five (5) years' imprisonment with labor and irons (being a consolidated sentence for this and the following case.) No. 7, seven (7) years' imprisonment and Nos. 8 and 10, three (3) years' imprisonment each, with labor and irons, and No. 9, three (3) years' imprisonment with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner Shurroop Chunder Deb (No. 6), Natu Naie (No. 7), Bhyrub Chung (No. 8), and Sheikh Monah Sonar (No. 10) have appealed on exactly the same pleas as they urged on the trial, *viz.*, enmity with the prosecutor and ill-treatment by the police, but they have adduced no proof in support of them. The prisoners Ramjoy Pal (No. 5) and Shurroop Chunder (No. 6) made full and explicit confessions before the darogah and the assistant, which have been duly proved, and which have been powerfully corroborated by the finding of some of the stolen articles in the places or with the persons indicated by the prisoners. The prisoners Natu Naie (No. 7) and Bhyrub Chung (No. 8), are implicated in the confessions of the above-named prisoners as accomplices in the robbery. The admissions made by them to the police and the magistrate, Natu Naie (No. 7), to his being an accessary before and after the fact, and Bhyrub Chung (No. 8) to his being an accessary after the fact, and the fact of their both giving up sundry articles of the stolen property, afford a violent presumption of their guilt. They should, equally with the prisoners Ramjoy Pal (No. 5) and Shurroop Chunder (No. 6), have been convicted of burglary, of which crime I now convict them. The prisoner Musst. Rashoo (No. 9) is the concubine of the prisoner Natu (No. 7.) The evidence to her delivering up a silver *hunslee*, or neck ornament, which she had secreted, and to her acknowledgment of privity to the robbery, is clear and conclusive of her guilt. The prisoner Monah Sonar (No. 10) produced two articles of the stolen goods, which he states he purchased from the prisoner Ramjoy Pal (No. 5), from the field where he had buried them. This fact, which is proved, is presumptive of a guilty knowledge; and the conviction is, in my opinion, good. There are no circumstances connected with the purchase of one article of the stolen property by the prisoner No. 11, which lead to the conclusion that it was received in the understanding of the guilty manner of its acquisition; and though he has not appealed, in this, and in the next case, he is acquitted.

In case No. 5, he was acquitted with the concurrence of the sessions judge on a reference to this court, and there is no greater proof of guilty knowledge in the one case than in the other. It is necessary to prove some circumstances from which the prisoner's guilty knowledge may be gathered, and such proof is entirely wanting."

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PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

RAMLOCHUN DOSS AND PUDDOLOCHUN DOSS

versus

SHURROOP CHUNDER DEB (No. 14, APPELLANT), RAMJOY PAL (No. 12, APPELLANT), RAMCHURN DEB (No. 13, APPELLANT) AND RAJ COOREE (No. 15.)

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The conviction of one prisoner on a charge of knowingly receiving stolen property, altered to that of burglary, of which he had also been charged, and one prisoner was acquitted by the Nizamut Adawlut, there being no evidence that he received the stolen articles with a guilty knowledge. The convictions and sentences of the other prisoners upheld by the Nizamut Adawlut.

CRIME CHARGED.—Nos. 12 to 14, burglary in the house of the prosecutors, breaking open the lock of a chest and box, and theft of cash and property valued at rupees 121-1-6. No. 14, 2nd count, knowingly receiving and possessing property obtained by the above burglary and theft, and No. 15, knowingly receiving and possessing property obtained by the above burglary and theft.

CRIME ESTABLISHED.—Nos. 12 and 13, burglary, and Nos. 14 and 15, knowingly receiving property obtained by burglary.

Committing Officer, Mr. A. Abercrombie, joint magistrate of Jumalpore.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 18th November 1851.

Remarks by the sessions judge.—"In this case, prisoner No. 12, Ramjoy Pal, No. 13, Ramchurn Deb and No. 15, Raj Cooree, have been convicted. Nos. 12 and 13 of burglary, and No. 15 of knowingly receiving property obtained by burglary, but another case, (trial No. 3,) in which these prisoners are concerned, having been referred to the Nizamut Adawlut, on account of a difference of opinion with the law officer, in regard to prisoner No. 15, Raj Cooree, the sentence passed upon these three prisoners has been postponed, and their names omitted in this statement, though they appear in the remarks on the case.

"A burglary was committed in the house of the prosecutors on the night of the 7th April, and property to the value of rupees 121-1-6 carried off. Prisoner No. 14, whose house adjoins that of the prosecutors' was apprehended, as part of the stolen property was found in his box, while searching his house in the case of Hurnath Rai, plaintiff. Prisoners Nos. 12 and 13, on the ground of property having been found with their concubines,

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and prisoner No. 15 as being implicated in the confession of No. 13. The prisoners Nos. 12 and 13 confessed in the Mofussil and before the assistant magistrate, the former to burglary, and the latter to knowingly receiving property obtained thereby; property was also given up by No. 12's concubine and by a *sonar*, to whom he had sold it, and also found buried in his cook-room, and by No. 13's concubine and by himself, from a place where he had buried it, by No. 14, from his box, and by No. 14's wife from his house. The defence of No. 14, in the foujdaree, was that the silver bangles were his wife's, and made by one Goluck Sonar. No. 15 admitted having purchased the *saree* from No. 13, and denied knowing it had been stolen. In this court, No. 12 alleged he had been charged, because he had joked with the prosecutor Puddolochun's wife; that he is an ameen employed by Mr. Brodie, an indigo planter, and on going to Neejabad, saw Puddolochun's wife being taken away by prisoner No. 13, who said she was going to be a prostitute; that afterwards No. 13 and she were taken to the zemindar's, and some days after returned, when the other prosecutor said he would repay him for trying to disgrace him; that on hearing that his house had been searched and some articles taken, went and appeared before the assistant at Jumalpore; that the confession was extorted by the darogah beating him, and threatening to put a wasp in his ear, and burning with a *chillum* on the thighs, and made him take up some property, and threatened that if he did not confess before the assistant, he would send in his wife, mother and sister, and named witnesses to prove that he had brought the piece of *chity* from Sherepore, and that he was at Rampore *Hât* on the day of the burglary, none of whom could testify to either fact. No. 13 told the same story about having found the prosecutor's wife, who said she was going to be a prostitute, and that he had taken her to an *akra* to be made a *busnub*, and afterwards give the *byragee* and the zemindar's *peadah* rupees 5 to settle the case; that hearing his brother and brother-in-law had been apprehended by the darogah and ill-used, and a *saree* given up by witness No. 26, he attended before the assistant, who sent him to the darogah, who beat him and extorted the confession, and took him to a tree, where some property was dug up by another person, and named witnesses to prove that the *saree* was his, and that he and his brother had been beaten by the darogah and others, to character and quarrel with prisoner No. 12, two or three only of whom, out of a large number, deposed in his favor, and the discrepancies in their statements render them unworthy of credit. No. 14 alleged he had been ill-used by the police and the confession extorted, but in fact there is no confession in the Mofussil or before the assistant, whereas in this court, he claimed

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the silver bangles and named witnesses to them, none of whom could recognise them. No. 15 said he had bought some broken silver (not in this case) and a *saree* from prisoner No. 13, not knowing it was stolen, and named witnesses to the purchase; none of whom corroborated his statement. The *futwa* of the law officer convicted the prisoners Nos. 12 and 13 of burglary, and Nos. 14 and 15 of knowingly being in possession of property obtained thereby, in which I concurred."

Sentence passed by the lower court.—No. 14, five (5) years' imprisonment with labor and irons (being a consolidated sentence for this and the preceding case;) No. 12, seven (7) years' imprisonment with labor and irons (being a consolidated sentence for this, the preceding and the following cases;) No. 13, five (5) years' imprisonment with labor and irons (being a consolidated sentence for this and the following case.)

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners Shurroop Chunder (No. 14), Ramjoy Pal (No. 12) and Ramchurn (No. 13) have appealed, relying on the pleas advanced in the preceding case, in which they have been found guilty. The prisoner Ramjoy (No. 12) confessed to the robbery, and Ramchurn (No. 13) to accessaryship before and after the robbery. They repeated these confessions, which have been duly attested, before the assistant magistrate; and the recovery of the stolen property from the persons to whom they had sold or pawned it, and from the places where it had been concealed by them, has been established by satisfactory evidence. The prisoner Shurroop (No. 14) is named by the confessing prisoners as having taken an active part in the robbery, and a pair of silver bracelets, which have been recognised by the prosecutor and his witnesses, were found in his box while searching his house in the case No. 3. His claim to the property as his own, is completely negatived, and he can give no account how he came by it. The presumption in this case is strong, that he obtained it by the robbery. I convict him, therefore, of the burglary, (on which charge he was also committed,) and not of knowingly receiving stolen property. The proof against Raj Cooree (No. 15), of guilty knowledge is, as noted above, insufficient for conviction, and I acquit him accordingly. I confirm the sentence passed against the prisoner Shurroop in this and in case No. 3."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

LUCHMUN DOSS BYRAGEE

versus

RAMJOY PAL (No. 16, APPELLANT), RAMCHURN DEB (No. 17, APPELLANT) AND RAJ COOREE (No. 18).

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Case of RAMJOY PAL and others.

The convictions and sentences of two prisoners for burglary, upheld by the Nizamut Adawlut.

CRIME CHARGED.—Nos. 16 and 17; 1st count, burglary by cutting the *tattee* of the house of the prosecutor and theft of cash and property valued at rupees 328-15-6; 2nd count, burglariously digging a hole in the foundation of the prosecutor's house, and No. 18, knowingly receiving and possessing property obtained by the above burglary and theft.

CRIME ESTABLISHED.—Nos. 16 and 17, burglary, and No. 18, knowingly receiving and possessing property obtained by the above burglary and theft.

Committing Officer, Mr. A. Abercrombie, joint magistrate of Jumalpore.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 20th November 1851.

Remarks by the sessions judge.—"The prosecutor's house was entered by cutting the mats, on the night of the 27th February, and property stolen to the amount of rupees 328-15-6, and No. 16 was apprehended on the grounds of part of the stolen property having been found in his house, while searching it in another case of burglary, and No. 17 as being implicated by the confession of No. 16, and No. 18, by that of No. 17. The prisoners Nos. 16 and 17 confessed in the Mofussil and before the assistant having committed the burglary, and property was given up by No. 16 and by other persons as purchased from No. 17. Before this court, No. 16 urged that the confession had been extorted by the police, and that the two swords found in his premises had been placed there by two burkundauzes, who had been living in his house for a month, and named witnesses to prove that the burkundauzes had lived at his house and to character, one of whom said, the burkundauzes had stayed there before the darogah came, and another had heard it. Three of the five witnesses to character are prostitutes. No. 17, that the confession had been extorted by the police, and denied having sold property to the *sonar* and to another prisoner, whose case has been referred, and that he was kept eight days at the thanna as will be shown by the dates of his confession at the thanna and before the assistant. It does not appear that he was kept so long, but three days having elapsed between the date of the prisoner's confession in the Mofussil and his arrival at Jumal-

pore, the distance being less than a day's journey. The assistant in charge of that division has been directed to inquire into the cause of it. The only witness named by him was his own brother, who said they had separated for one and a half year. The *futwa* of the law officer convicts the prisoners of burglary, in which I concurred, and have passed a severer sentence upon No. 16 as he has been convicted of three burglaries."

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Case of RAMJOY PAL and others.

Sentence passed by the lower court.—No. 16, seven (7) years' imprisonment with labor and irons (being a consolidated sentence for this and the two preceding cases.) No. 17, five (5) years' imprisonment with labor and irons (being a consolidated sentence for this and the preceding case.)

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—" The prisoners have appealed. The same pleas were adduced as in the other cases, but are unsupported by the witnesses cited by them. The confessions of the prisoners are proved to have been voluntarily given and are corroborated by the recovery of the stolen property. I see no reason to interfere with the convictions of the prisoners. I confirm the consolidated sentence passed on the prisoners, No. 16 in the three cases abovementioned, and No. 17 in cases Nos 4 and 5.

" The prisoner Raj Cooree (No. 15), was acquitted by me on a reference made by the sessions judge in this case, see page 1673 of the Nizamut Reports for December 1851."

PRESENT:

J. R. COLVIN, ESQ., *Judge*.

A. J. M. MILLS, ESQ., *Officiating Judge*.

GOVERNMENT

versus

MUSST. MANICK BEWA

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February 13.

Case of MUSST. MANICK BEWA.

Prisoner sentenced capitally for the deliberate murder of her newly-born infant, by cutting its neck nearly entirely through.

CRIME CHARGED.—Wilful murder of the prisoner's newly-born female infant.

Committing Officer, Mr. A. Forbes, magistrate of the southern division of zillah Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 22nd December 1851.

Remarks by the sessions judge.—" The particulars of the case are briefly these:—On Wednesday, the 3rd December 1851, when Sham Mullick the *shikmee*, or sub-chowkeedar, of mouza Sutyabadee, went to the Ruttun Cheera river, which runs contiguous to the said mouza, at about 5 o'clock P. M. to look at his fishing-net, he discovered the body of a newly-born infant lying in about three inches or four fingers' depth of water, on a piece of a

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broken earthen vessel, and forthwith went and told the jemadar of the neighbouring police *phandy*, who proceeded to the spot indicated, and had the body of the infant removed from the water, when a cut, three inches in length, was observed across its throat. The jemadar then sent information to the darogah of thanna Pooree, who arrived the following morning to investigate the case, and having caused the prisoner, Manick Bewa, who was previously known to have been pregnant, to be apprehended, she confessed that the child, a female, was her's, and stated that, having been delivered on Tuesday night, previous, she took the child in a basket to the river, where, in consequence of its crying, she cut its throat with the piece of an earthen vessel, and threw it into the water and went home; and she made a similar confession on being taken before the magistrate on the 6th of December.

"Before this court the prisoner admitted that she gave birth to the child, but stated that it was still-born; and that she did not know what she said before the darogah as she was in a state of stupor, '*behoshee*', from his beating her.

"The witnesses to the confessions both before the police and the magistrate depose to those confessions having been voluntarily made by the prisoner, and she was unable to adduce any evidence in support of her assertion that she was beat by the darogah.

"The *futwa* of the law officer convicts the prisoner, Manick Bewa, of the wilful murder of her infant daughter, and declares her liable to punishment by *deeyut, kissas* being barred by the Mahomedan law, in consequence of the relationship between the prisoner and the deceased.

"In the conviction of the prisoner, Manick Bewa, of the crime of wilful murder, I fully concur, and with reference to the extra act of barbarity displayed by her in cutting the throat of the infant, when that of drowning alone would have effected her unnatural design, the depriving her own child of life, I can see no extenuating circumstances in her favor, and would therefore suggest that she be sentenced capitally."

Remarks by the Nizamut Adawlut.—(Present: Messrs. Colvin and Mills.)—MR. MILLS.—"The prisoner confessed before the darogah and the magistrate that she privately delivered herself of a female infant, and that, to preserve her reputation for chastity and to avoid the disgrace of losing her caste, she put it into a basket with the umbilical cord attached, and took it to the river with the intent to throw it away, and because it cried when there, she cut its throat. The confessions have been duly proved, and the assertion made at the trial that the darogah ill-treated her is wholly unsupported. Her further plea that the child was still-born is refuted by the fact of the child's head having been nearly severed from the body; it is not credible that she would have cut

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the infant's throat had it been still-born. It would have been more satisfactory had the sessions judge examined the civil surgeon who deposed before the magistrate that the child appeared to have reached maturity; that to the best of his belief it was born alive; and that its death could be accounted for in no other way than from the incised wound across the neck; but as there is no doubt that the child was born alive, I do not think it necessary to send back the case for the purpose of supplying the omission. It has not been the practice of this court to sentence prisoners convicted of child-murder by exposure, capitally, but this is a case marked with the aggravating circumstance that the prisoner deliberately destroyed her newly-born illegitimate child by cutting its throat, and I do not see any ground to mitigate the sentence. I am of opinion that the prisoner should be adjudged to suffer death."

Mr. J. R. Colvin.—"The case is one of deliberate murder of her newly-born infant by the prisoner, the neck of the child having been nearly entirely cut through. I must, therefore, concur in the proposed capital sentence.

"The sessions judge must be careful, as pointed out by Mr. Mills, to examine the medical officer in all such trials before him in future."

Present:

A. J. M. MILLS, Esq., *Officiating Judge.*

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HOSIM BEBEE

versus

GURRIBULLAH (No. 1), ASARUDDEEN (No. 2) and JOLISH (No. 3.)

The sentence passed upon the prisoners, upon one upon a conviction of burglary and theft, upon another upon that of receiving stolen property, and upon a third upon privity, affirmed by the Nizamut Adawlut. The court remarked that the offence of the third prisoner amounted to more than privity, and the sentence passed upon him was unduly light.

Crime Charged.—Charged with burglary and theft of property to the amount of Company's rupees 1,014; *secondly*, with receiving property knowing it to be stolen; *thirdly*, being privy to the above burglary and theft.

Crime Established.—Burglary and theft.

Committing Officer, Mr. H. S. Porter, deputy magistrate of Noacolly.

Tried before Mr. H. Stainforth, sessions judge of Tipperah, on the 22nd November 1851.

Remarks by the sessions judge.—"Hosim Bebee first declared herself to have been robbed of property to the value of rupees 293-2-6, but her husband, about a month and a half after-

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wards, filed a petition averring that he had been in Calcutta, and giving a list of property stolen amounting to rupees 1,014.

"Gurribullah, (No. 1), denied throughout. He pleaded that the property declared to have been found on him was thrown down by one Ghazee Mahomed Goinda and was told that Matadeen Jemadar, the officer who sent in the prisoners, had sent for him. He caused the evidence of two persons to be taken for his defence, but they said nothing in exculpation of him. He was arrested by Buksee Chowkeedar, going his round, with aid of others, carrying a bundle containing some of the stolen property. Asaruddeen (2), the father-in-law of the preceding prisoner pleaded 'not guilty', and declared that he had been beaten by the police and made to sign a confession, and that he did not know how a confession had been recorded in the magistrate's court. The witnesses whom he called for his defence said nothing in support of it. His proved confessions before the police and magistrate, are to the extent of knowingly receiving from Gurribullah part of the stolen property (things) which were proved to have been produced by him. He was arrested in consequence of being implicated by Jolish (No. 3.)

"Jolish (No. 3,) pleaded before this court that Gurribullah (No. 1,) Dya Gazee and Asaruddee (No. 2,) gave him rupees 5, telling him that they had buried property found in the compound of one Buddee, which he was to point out to Matadeen Jemadar, and that he had given a clue to the robbers whom two darogahs had failed to find. He produced no witnesses. The first information to the police was given, as he is proved to have admitted in his answer before the jemadar, to throw the guilt of the robbery on an innocent person, and his answer shows that he had concealed the real circumstances of the robbery with which he was acquainted, making no mention of Gurribullah, &c., afterwards implicated by him.

"The *mooftee* finds Gurribullah guilty of burglary and theft, Asaruddee of knowingly receiving stolen property and Jolish of privity. Concurring in this opinion, I have sentenced Gurribullah, who is proved to have been sentenced to two (2) years' imprisonment for theft in zillah Backergunge, to seven (7) years' imprisonment with labor in irons, Asaruddee to one (1) year's imprisonment with labor in irons, and Jolish to six (6) months' imprisonment with labor commutable with a fine of rupees (20) twenty."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The evidence to the prisoner Gurribullah being seized at night in the act of carrying away a portion of the stolen property, which he was no doubt removing for the purpose of concealment, is clear, and the facts of the case point to the prisoner as having been concerned in the robbery. The admissions of the other prisoners, which are supported by their giving up

some of the stolen articles, are conclusive of their guilt; but I consider the offence of the prisoner Jolish amounts, as has been already intimated to the sessions judge by the judge in charge of the English Department, to more than privity. He should have been convicted of being an accessary after the fact in receiving the stolen property, knowing it to be stolen. He pointed out the exact place where the property was buried, and I put no faith in his defence that he was only *told* by others where it was concealed. The circumstances of the case called for a severer sentence than six (6) months' imprisonment."

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Case of GURRIBULLAH and others.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT AND BHUGWAN CHUNDUR BISWAS

versus

SUBBESSUR BONICK (No. 1), SEETUL CHUNDER BONICK (No. 2) AND SHEIKH ERUN SHAH (No. 3).

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Case of SUBBESSUR BONICK and others.

Reasons may not be sufficient to reject evidence in *toto*, but may be such as to render the passing the irrevocable sentence of death improper.

CRIME CHARGED.—1st count, wilful murder of Deep Chund Biswas, brother of Bhugwan Chunder, prosecutor; 2nd count, being accomplices to the same.

Committing Officer, Mr. T. B. Mactier, joint magistrate of Furreedpore, Dacca.

Tried before Mr. R. Hampton, officiating sessions judge of Dacca.

Remarks by the officiating sessions judge.—"The particulars of the case are as follow:—The prosecutor deposed that the deceased, (his brother,) was in the prisoner (No. 1) Subbessur's service for two years as gomashta, and that in consequence of an improper intimacy between the prisoner's wife, Orno, (witness No. 1) and his brother, for 5 or 4 months previous to the occurrence, he tried to persuade him to quit the prisoner's service. His brother, however, would not listen to him, but was always at the prisoner's house, where, in fact, he lived. On the 28th August last, his brother went home to contract a second marriage. On the 30th, his brother returned to the prisoner's house, to render his accounts; and on the morning of the 31st August, he heard from Erun Shah, (prisoner No. 3), that prisoners Nos. 1 and 2, Subbessur and Seetul, and Nobin Bonick had cut his brother's throat, and had thrown his corpse in Sheikh Khosaul's field of chillies. Hearing this, he and Mohes Biswas (his cousin) went to the field, and there they saw the corpse of deceased, with his throat cut. He left Mohes with the corpse, and returned home, where he met prisoner No. 1 Subhessur, who, abusingly said that his gomashta, (the deceased,) had last night run away

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without rendering any account. On this, he replied, 'what! you 'murdered my brother last night, and this morning you are mak-'ing a disturbance at my house about your accounts?' He and his cousin Mohes and the chowkeedar shortly afterwards reported the murder at the thanna. The darogah arrived on the 31st August on the spot, held an inquest on the body, and forwarded it to the station. On interrogation, the prosecutor said that his house is in the same village as that of the prisoner. The prisoner never before maltreated the deceased, but the Bonicks used to take the deceased to task for his improper intimacy with the prisoner's wife. The deceased had no intrigue with any other female. Nobin Bonick, nephew of prisoner No. 1, Subbessur, also carried on an intrigue with the prisoner's wife. The deceased was about 27 years of age. The wound was inflicted on the back of his neck; and the head was nearly severed from the body. His belief is that deceased was murdered in the field, as there was a quantity of blood on the ground where the corpse was found. The corpse was nearer the house of prisoner No. 3, Erun, than that of prisoner No. 1 Subbessur. Prisoner No. 3 is a ryot of prisoner No. 1, who is his mahajun.

"Witness No. 1, wife of prisoner No. 1, Subbessur, deposed, that the deceased was their gomashta for two years. In Assar last, he met her near the ghaut, and said that he had a secret which he wished to entrust to her, she replied, why should she keep any secret of his, and added that she would tell her husband of what had passed. This, however, she did not do, but she told her daughter Soorujmonee, (witness No. 2) who took the deceased to task for his improper behaviour. In Bhadoon last, on a Saturday, about 2 or 3 o'clock at night, while she was sleeping in her house and her husband in the verandah, some one entered the house and touched her. She screamed out and the man ran out; but he was caught at the door by Seetul Bonick and Erun Shah, (prisoners Nos. 2 and 3.) She got up and recognised the deceased. She called her husband, who inquired 'what is this?' They answered, 'you have a worthless servant 'who wants to bring disgrace on your caste.' Her husband said, 'If such is the case, I will discharge him, (the deceased,) 'to-morrow, but let him go just now.' Seetul replied that 'he, '(deceased) has brought disgrace on your caste, and I will punish 'him accordingly.' Erun Shah and Seetul then dragged him away to the tank close to the house, and her husband followed, exclaiming, 'let him go, I will discharge him to-morrow.' Her husband shortly afterwards returned and told her that, notwithstanding his prohibition, Erun Shah had murdered his gomashta, and they had thrown his corpse into the field of chillies. On interrogation, witness said she 'identified the 'deceased at a distance of two *haths*.' She also identified Erun

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Shah and Seetul at the door where they seized the deceased. Seetul lives in the same house as her husband. Erun Shah lives about 10 *haths* off, and is a ryot of theirs. Her husband is his mahajun. The deceased that night slept in his own house, which is in the same village. She was alone in the house, and her daughter slept in the eastern house. It was not a dark night. People could be recognised. When the deceased was being carried off, her daughter, Soorujmonee, came out of her house, and followed her father for a short distance, and afterwards came to her (witness') house. She did not hear the deceased cry out. Erun Shah had hold of him by the throat, and Seetul by the hair. The deceased wanted to carry on an intrigue with her, but nothing of the kind existed. In reply to a question of prisoner No. 3, she said that her husband and he did eat together. The prisoner wished to make out that some misunderstanding existed between them.

"The evidence of witness No. 2, who is the daughter of prisoner No. 1, Subbessur, is much to the same purport as the above. She did not witness the seizure of the deceased, but when he was being carried off, she, hearing a noise, got up, and saw Erun Shah and Seetul dragging him away to the tank to the west of the house. Her father was present at the time, and she followed him for a short distance, and returned to her mother. Erun and Seetul returned that night, and told her not to mention what had happened. The next day she heard that the gomashta had been murdered and her father told her that Erun Shah had committed the murder. She also deposed that her father told Erun Shah and Seetul to let go the deceased, and that he would discharge him the next day.

"Witness No. 3, who is the nephew of prisoner No. 3, Erun, deposed that on the night of the occurrence he was sleeping alongside of Erun Chokra in Seetul's (prisoner No. 7's) house, and having occasion to get up he went outside, and hearing a disturbance at the prisoner No. 1, Subbessur's house, he was induced to go there, and he saw that prisoners Nos. 1 and 2, Subbessur and Seetul, and Nobin had got hold of the deceased. He saw no one else there. The deceased did not cry out. They asked him what he wanted, on which he ran away. The day he heard of the murder of the deceased, he heard that an improper intimacy had existed between the deceased and the prisoner No. 1's wife. He told the prosecutor's cousin (Mohes) what he had witnessed. He is not on friendly terms with his uncle, prisoner No. 3, Erun. He has a house of his own.

"Witnesses Nos. 4 and 5 deposed to the *sooruthal*, and that the corpse was that of Deep Chund Biswas.

"Baboo Neelmoney Dutt, sub-assistant surgeon, deposed that the deceased's death was caused by an extensive incised wound

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on the back part of his neck, which had nearly severed the head from the body.

"Witnesses Nos. 11, 12, 13, 14 and 15 deposed to having seen the corpse of the deceased in the field of *chillies*. They also heard that an improper intimacy had existed between the deceased and the wife of the prisoner No. 1.

"The prisoner No. 1 in his defence said that the deceased was for two years in his service as gomashta. On the 5th Bhadoon, Erun Shah told him that his gomashta, during his (prisoner's) absence, on the excuse of talking about the rents of the farm, used to carry on an improper conversation with his wife, and that the gomashta was a bad man and would one day bring disgrace on his caste. The following day he directed the gomashta to give his *nikas*, which he promised to do, but neglected to do so. On the Saturday following he slept in the verandah of his house, and his wife slept within the house. About twelve at night hearing his wife scream, he awoke, got up, and saw that Erun Shah and Seetul had got hold of the gomashta at the door of his house. His wife told him that the gomashta had entered the house and touched her. Erun Shah said, 'see! I have caught hold of Deep Chund (the gomashta!') He said let him go, he would prosecute him in the civil court for damages. They would not listen to him, but dragged the gomashta towards the tank. He followed them, desiring them to let go the gomashta; but they would not pay attention to what he said. Seetul said 'he who brings such disgrace on your caste cannot be released.' They then dragged the gomashta to the field of chillies, and Erun Shah with a *senddo*, a large kind of *sickle*, murdered the gomashta. He then returned home and told his wife what had happened. The prisoner had no witnesses. His defence both before the magistrate and the police was to the same tenor as the above.

"Prisoner No. 2 denied the charge, and said Soorujmonee, witness No. 2, told him that her father, Subbessur Bonick, (prisoner No. 1,) had murdered the deceased; that her father afterwards corroborated her statement, adding that he and Erun Shah murdered the deceased because he had entered his house and committed adultery with his wife. He and Subbessur Bonick have been at enmity for the last three or four years. He has no witnesses.

"Prisoner No. 3 denied the charge, and said that enmity exists between him and the family of the Bonicks. He once complained to the magistrate against them, and hence the reason of his having been implicated by them. He is a Mussulman, why should he have mixed himself up in the affair.

"Three witnesses were examined on the prisoner's behalf.

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"Witness No. 17 deposed that three or four years ago, the prisoner complained against the Bonick family. He was not aware that enmity now existed between them.

"Witness No. 18 deposed that he was not aware that enmity existed between the prisoner and the Bonicks.

"Witnesses Nos. 19 and 20 deposed that about four or five years ago the prisoner complained against the Bonicks. Witness No. 20 added, that he has heard of enmity existing between the prisoner and the Bonicks, but on what account he knew not.

"The weapon with which the murder was committed has not been found.

"The *futwa* of the law officer convicts the prisoners of accompliceship in the murder of the deceased, and declares them liable to *akoobut*, the measure of punishment resting with the *hakim*, on the grounds set forth in the *futwa*.

"From the statement of the case, as detailed above, it will be observed that Subbessur Bonick and Seetul Bonick, (prisoners Nos. 1 and 2,) and Musst. Orno and Musst. Soorujmonee, (witnesses Nos. 1 and 2,) are relatives and reside in the same *barree*, although in separate houses. Orno and Soorujmonee are the wife and the daughter of Subbessur Bonick, who is the uncle of Seetul Bonick. Sheikh Haram (witness No. 3,) is the nephew of Erun Shah, (prisoner No. 3.) They live in one *barree*, which is close to that of the Bonicks, but in separate houses. The former is also a *ryot* of Subbessur Bonick, who is his *mahajun*.

"The evidence of the witnesses Nos. 1 and 2, to the fact is consistent throughout, and notwithstanding the lapse of nearly five months between the recording of their depositions in the magistrate's court and at the sessions, there are no discrepancies between their depositions taken in the two courts, worthy of notice. These witnesses recognised the prisoners on the spot, *i. e.*, the former at the moment the deceased was seized at the door, and the latter when he was being dragged away to the tank. I can find no reason to question their evidence. The evidence, however, of witness No. 3 is not without suspicion. His deposition was not taken by the police until ten days after the occurrence. He states that he told Mohes Biswas (cousin of the prosecutor,) that he witnessed the seizure of the deceased by prisoners Nos. 1 and 2 and Nobin Bonick. If his statement were true, the delay in the taking of his deposition by the police has not been accounted for. Besides the witness assigned no good reason for his having slept on the night of the occurrence in the house of prisoner No. 2, when he had a house of his own close by. It will also he observed that although, as he states, enmity exists between him and his uncle, he has exculpated him. For these reasons, I reject this witness's evidence. I am nevertheless of opinion that the guilt

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of the prisoners is fully established by the depositions of the witnesses Nos. 1 and 2, and in concurrence with the *futwa* of the law officer, I convict Seetul Bonick and Erun Shah of accompliceship in the murder of Deep Chund Biswas; and I propose that they be sentenced to transportation beyond sea for the term of their natural lives. I also, in concurrence with the *futwa* of the law officer, convict Subbessur Bonick of accompliceship in the murder of Deep Chund Biswas; but taking into consideration the great provocation which he received, and his age, which is between sixty and seventy years, (he states sixty-eight), I propose that he be sentenced to ten (10) years' imprisonment in the district jail, with labor and light irons."

Remarks by the Nizamut Adawlut.—(Present:—Mr. R. H. Mytton.)—"The prisoners in this case, Subbessur, Seetul and Erun, are charged with the wilful murder of Subbessur's gomashta, the motive being an intrigue of the deceased with Subbessur's wife. The natural person to suspect of committing or instigating the commission of this act is Subbessur, but he has throughout the proceedings, from first to last, denied that he took a part in the murder, and asserted that when the deceased was seized by the other two prisoners, he begged of them not to murder him, that if he had done wrong he would turn him off. The only two witnesses in the case who, according to the sessions judge, are at all to be believed, corroborate his assertion, nevertheless the *futwa* of the law officer has convicted him of complicity in the murder; because having witnessed it he pretended the next day that deceased was alive and went to seek him to make up his accounts. This can only render him liable for privity to the murder.

"The evidence of Orno, the wife of Subbessur, and Soorujmonee his daughter, would, if entirely free from suspicion, warrant a sentence of capital punishment against Seetul and Erun. They are, however, persons who, from their position with regard to the parties, are not disinterested, and another witness, Haram, has given evidence which tends to call theirs in question. These are not sufficient reasons for rejecting their evidence *in toto*, but they are, for not passing an irrevocable sentence. For the foregoing reasons, I find the prisoners Seetul and Erun guilty of the wilful murder of Deep Chund Biswas, and the prisoner Subbessur, of privity thereto, and in concurrence with the recommendation of the officiating sessions judge, sentence the two former to imprisonment for life in transportation, and the last to imprisonment with rings and labor in the zillah jail for seven (7) years."

PRESENT:

J. R. COLVIN, Esq., *Judge*.

NARAIN NUNDY

versus

KOOSUL NAIK (No. 11), GOOROO CHURN NAIK (No. 12), KISTO NAIK GHUTWAL (No. 13), BHYRUB NAIK (No. 14), GYARAM NAIK (No. 15), LUKHICANT, ALIAS KANA NAIK (No. 16), SOOBUL ROY (No. 17, APPELLANT) SUNKER BAOREE (No. 18), NUNDO ROY (No. 19, APPELLANT), GOPAUL NAIK (No. 20), NUFFER NAIK (No. 21), KANIE NAIK (No. 22), MUDHOO NAIK (No. 23), HURI BAOREE (No. 24), SEEBOO ROY (No. 25, APPELLANT), BURRA MUDHOO ROY (No. 26, APPELLANT), KISTO NAIK (No. 27), CHOTA MUDHOO ROY (No. 28, APPELLANT), THAKOOR DASS NAIK (No. 29), PUDDOO ROY (No. 30, APPELLANT) AND BHURUT NAIK GHUTWAL (No. 31).

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Case of SOOBUL ROY and others.

Convictions and sentences for dacoity by the sessions court, upheld by the Nizamut Adawlut. Six out of fourteen prisoners appealed, admitting that they had acknowledged their guilt up even to the sessions trial, but alleging that this was from false hopes of escape, held out to them by the darogah. These, however, were merely unsupported, and grossly improbable assertions.

CRIME CHARGED.—Nos. 11 to 26; 1st count, dacoity in the house of the prosecutor, in which dacoity the prosecutor's son, Deenobundoo, was wounded, and property to the value of rupees 37-6-9 was plundered from the house of the prosecutor by them on the night of the 25th September 1851, corresponding with the 10th Assin 1258 B. S.; and, 2nd count., receiving and possessing property acquired in the above-mentioned dacoity, knowing the same to have been so acquired. Nos. 27 to 30, dacoity in the house of the prosecutor, in which dacoity the prosecutor's son, Deenobundoo, was wounded, and property to the value of rupees 37-6-9 was plundered from the house of the prosecutor by them, on the night of the 25th September 1851, corresponding with the 10th Assin 1258 B. S.; and No. 31, 1st count, receiving and possessing property acquired in the above-mentioned dacoity, knowing the same to have been so acquired; 2nd count, accessary after the commission of the above-mentioned dacoity; and, 3rd count, privy to receiving and possessing property acquired in the said dacoity.

CRIME ESTABLISHED.—Nos. 11 to 31, dacoity, and No. 31, accessary after the commission of the above-mentioned dacoity, and having possession of property acquired by it.

Committing Officer, Mr. C. H. Campbell, officiating joint magistrate of West Burdwan.

Tried before Mr. C. Garstin, sessions judge of West Burdwan, on the 1st November 1851.

Remarks by the sessions judge.—"All the prisoners committed for trial in this case plead 'guilty' to the crimes with which they stand charged, and as they have done the same from the

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Case of Soobul Roy and others.

very first, both to the police and to the magistrate, and their statements generally are borne out and corroborated by their having given up various articles of property carried off from the prosecutor's, there can be no question of their guilt. The police were first of all put upon their track by a man named Chyetun (probably an accomplice), in consequence of which some of the party were apprehended, and a portion of the stolen property found with them. These men at once confessed and named others of their companions, who were then apprehended, and in like manner confessed and gave up what they had; and in this way the whole gang were captured and sent into the magistrate, to whom they repeated their confessions. In fact, they do not in the smallest degree attempt to deny what they have done; and as there is no doubt of their guilt, I have, in concurrence with the verdict of the assessors, which convicts them all, sentenced them as noted in the preceding column."

Sentence passed by the lower court.—No. 13, seven (7) years' imprisonment, with labor and irons and two (2) years' more in lieu of corporal punishment, altogether nine (9) years. Nos. 11, 12, 16, 20, 21 and 23, each, seven (7) years' imprisonment, with labor in irons. Nos. 14, 15, 17, 18, 19 and 23 to 30, each five (5) years, with labor in irons, and No. 35, three (3) years' imprisonment, with labor in irons.

Remarks by the presiding judge.—(Present: Mr. J. R. Colvin.)—"The prisoners Nos. 17, 19, 25, 26, 28 and 30 have appealed. They admit their acknowledgment of their guilt up even to the sessions trial, but pretend that this was from the false hopes of escape held out to them by the darogah. These are merely unsupported and grossly improbable assertions, and there is no ground for interfering with the convictions and sentences."

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

ALLUM PRAMANIK

versus

HAZAREE BEG.

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Case of HAZAREE BEG

A magistrate is competent to dispose of a case of burning of the person under his general powers, declared by Section XIX., Regulation IX. of 1807, and explained by Circular Order, No. 53, of June 12, 1840, and No. 102, of February 25, 1842. A reversal of a magistrate's judgment in such a case, on the ground of the decision having been beyond his powers, held to be incorrect, and the sentence, which was passed by the sessions judge, reduced to that which had been passed by the magistrate.

CRIME CHARGED.—Burning his wife Roopee Owrut, with a hot *chillum* on different parts of her body.

CRIME ESTABLISHED.—Burning the person of his wife Roopee Owrut, with a hot *chillum*.

Committing Officer, Mr. A. Littledale, magistrate of Rajshahye.

Tried before Mr. T. Taylor, Commissioner of the 14th division, with powers of a sessions judge, on the 15th December 1851.

Remarks by the Commissioner.—"This case is very similar to the one reported above. The burning was not so severe, but it was made up in aggravation by the extreme youth of the prisoner's wife, a small and delicate looking girl of about twelve or thirteen years of age. This case was originally disposed of by the magistrate, on the 21st October last, with a sentence of six (6) months' imprisonment, and rupees (200) two hundred fine, or six (6) months' additional imprisonment. The prisoner appealed, and the decision was reversed by the sessions judge, as beyond the competence of the magistrate to dispose of.

"Roopee Owrut, the injured person, states that on the evening of the date charged, she was lying down ill with fever, when her husband came home, and asked for water, and as she was unable to give it him, he burnt her with a heated *chillum*, on the right side of her face, left shoulder, both breasts and on the abdomen, the marks of which are still visible on her person. Two witnesses deposed to having gone to the house of Roopee, on hearing her cries, when they saw the prisoner throw down the *chillum* and decamp. The prisoner also confessed to the crime, both in the Mofussil and before the magistrate, and the confessions were proved to have been freely made. The prisoner denied the charge in this court, but had no defence to offer. The assessors convicted him of the charge, in which I concurred. The prisoner having already been once sentenced by the magistrate, and undergone a portion of his sentence, I did not think it necessary to impose more than an additional six (6) months' imprisonment to the award formerly made."

Sentence passed by the lower court.—To be imprisoned without irons, for one year and six months, and to pay a fine of rupees (25) twenty-five, on or before the 14th of January 1852, and in default of payment, to labor until the fine be paid, or the term of sentence expire.

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HAZAREE BEG.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—" The magistrate was clearly competent to dispose of this case himself, under his general powers declared by Section XIX. Regulation IX. of 1807, and explained by Circular Orders, No. 53, of June 12th 1840, and No. 102 of February 25th 1842. The reversal of his judgment, by the order of the sessions judge of 24th November 1851, was therefore incorrect.

" The sentence is accordingly reduced to that awarded by the magistrate, *viz.*, to imprisonment with labor without irons, for six (6) months, from October 21st 1851, and to payment of rupees (200) two hundred fine, or, in default of payment, to six (6) months' additional imprisonment.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

ZUMEER GAYEN

versus

CHAND BEG.

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Case of
CHAND BEG.

Requisition to furnish security for good conduct for three years, to the amount of rupees two hundred confirmed.

CRIME CHARGED.—1st count, dacoity, on the night of the 25th September 1848, on board of the prosecutor's boat, and plundering cash and property valued at rupees 255-11; 2nd count, knowingly receiving property obtained by the above dacoity; 3rd count, being an accomplice and aiding and abetting the above dacoity.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 18th December 1848.

Remarks by the sessions judge.—" The evidence against this prisoner was recognition by prosecutor's wife, but she did not name him at the thanna, or to the people whom she saw immediately after the dacoity, although a resident of the same village, and a notorious bad character, having been imprisoned by the record-keeper's report, for fourteen (14) years for dacoity, two (2) for breaking jail, six (6) months in a case of plunder, and received corporal punishment for theft in jail, but by his own account he has been imprisoned for dacoity, &c., for thirty-five years. The further evidence is, the finding a bag full of the property in his premises, but under circumstances which render it unworthy of credit. On his apprehension his house was searched and no property found, and the police left the village, but thirteen days after his son and servant were apprehended, and they and his wife kept during the night in the outer house, leaving only a slave girl and a child in the house itself, and she, on opening the door next morning, saw a bag lying in the open space

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Case of CHAND BEG.

between the house and out-offices, and to which place access was easy. She called the police, and the property was found to be part of that carried off by the dacoits. Under these circumstances, I consider the prisoner entitled to acquittal, but as he has been implicated by both the confessing prisoners as the planner and participator in the dacoity, and taking into consideration his bad character, I have directed security to the amount of rupees (200) two hundred, to be taken from him under Section X., Regulation VIII. of 1818."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"I see no reason to interfere with the sessions judge's order."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

MOHUMUD TUCKEE

versus

AZIMUDDIN.

1852.

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Case of AZIMUDDIN.

The witnesses cited after committal by a prisoner as necessary to his defence having been examined, his appeal, on the ground of his real witnesses not having been examined, rejected.

CRIME CHARGED.—1st count, wilful murder of Run Ghazee, the father of the prosecutor; and, 2nd count, accomplice in the above murder.

CRIME ESTABLISHED.—Accomplice in culpable homicide.

Committing Officer, Mr. E. F. Radcliffe, officiating joint magistrate of Noacolly, Tipperah.

Tried before Mr. H. Stainforth, sessions judge of Tipperah, on the 17th November 1851.

Remarks by the sessions judge.—"Prosecutor states that on his return home, he found his father Run Ghazee dead, and heard that he had been assaulted and killed by the prisoners committed for trial, who were, on several grounds, on bad terms with him.

"The native doctor's evidence shows that several of the deceased's ribs were broken, and that the injuries received by him were the cause of death. Azimuddin pleaded *alibi*, which his witnesses did not support. In his proved answer before the police he declared Zeeda Gazee and Tara Gazee to have been the assailants of Run Gazee, and that he had endeavoured to prevent them; but he is sworn by Tara Gazee to have been one of the assailants, and he is shown by the evidence of the other witnesses to have been one of the persons, who, after the assault, dragged Run Gazee apparently dead to his own house, where he was immediately afterwards found a corpse, and to have been the person who was chiefly at enmity with the deceased.

"The deceased was seen to be beaten by the hands of his two assailants, who dragged him into Zeeda Gazee's house. How

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he was beaten there does not appear; but it is shown that he was quite well before the assault took place.

"In concurrence with my assessors, I have held Azimuddin an accomplice in culpable homicide and sentenced him to seven (7) years' imprisonment with labor and irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"In support of his appeal, the prisoner prefers his plea of *alibi* as proved in the magistrate's court, and urges that the sessions judge did not examine his real witnesses, but some persons who were in the interest of the prosecutor. On referring to the record, however, I find that the persons cited by prisoner as necessary to his case, in the answer to the usual question after committal, have been examined and do not support the plea; the appeal is rejected."

PRESENT:

R. H. MYTTON. ESQ., *Officiating Judge.*

MUSST. MATOONEE

versus

MAHOMED RUFFEE CHOWKEEDAR.

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Case of MAHOMED RUFFEE CHOWKEEDAR.

Prisoner found guilty of culpable homicide, the deceased having died of injuries received a month previously from him, a sentence of three years with a fine, commutable to labor of forty-five rupees, confirmed.

CRIME CHARGED.—Culpable homicide of Amjad.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. E. F. Radcliffe, officiating joint magistrate of Noacolly.

Tried before Mr. H. Stainforth, sessions judge of Tipperah, on the 19th November 1851.

Remarks by the sessions judge.—"Amjad, the son of the prosecutrix, confined a servant of the prisoner under claim of money, when the prisoner came and struck and kicked Amjad on the head and face, breaking one of his teeth, and causing blood to flow from his mouth and ear; Amjad lingered for upwards of a month and died.

"There is no evidence whatever showing that Amjad was ill, though the prisoner pleads that he died of illness, and that the villagers were at enmity with him on account of his wages as chowkeedar. On the contrary, the evidence shows, that he was in health till assaulted, and died in consequence of the injuries inflicted on him.

"The assault appears to have been a very brutal one, and I have sentenced the prisoner to three (3) years' imprisonment with labor, commutable to a fine of rupees (45) forty-five."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The appeal is preferred on the same grounds as the defence was founded. I see no reason to interfere with the sentence passed."

PRESENT :

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

AMIRUDDIN CHUPPRASSEE.

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Case of AMIRUDDIN CHUPPRASSEE.

Sentence of five years with labor and irons, in an aggravated case of wounding, confirmed.

CRIME CHARGED.—Maliciously wounding Musst. Remonee, and thereby causing her severe bodily injury, on the 11th September 1851, corresponding with 27th Bhadoon 1258, Bengalee Era.

CRIME ESTABLISHED.—Maliciously wounding Musst. Remonee, and thereby causing her severe bodily injury.

Committing Officer, Mr. H. Rose, joint magistrate of Khoolnah.

Tried before Mr. R. Skinner, sessions judge of Jessore, on the 17th November 1851.

Remarks by the sessions judge.—" From the evidence for the prosecution, and from the confession of the prisoner both before the police and the joint magistrate, the crime is proved.

" The prisoner here does not deny the charge, but pleads forgetfulness caused by intoxication.

" I concur in opinion with the *futwa* of the law officer which convicts the prisoner, whom I sentence to five (5) years' imprisonment with labor and irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" This is a cruel case of wounding. Prisoner on some trivial squabble knocked his mistress down, and while she was insensible inflicted severe wounds on her privy parts with a razor. He appeals, pleading intoxication. The fact is not proved. I see no reason to interfere with the sentence."

PRESENT:

SIR ROBERT BARLOW, BART., *Judge.*

GOVERNMENT

versus

NOBIN KOWRAH.

1852.

February 16.

Case of NOBIN KOWRAH.

The prisoner in his confession before the magistrate and sessions judge, was convicted of having belonged to a gang of dacoits, and was sentenced under Act XXIV. of 1843.

CRIME CHARGED.—Having belonged to a gang of dacoits within the meaning of Act XXIV. of 1843, Section I.

Committing Officer, Mr. S. Wauchope, magistrate of Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly.

Remarks by the additional sessions judge.—"I have the honor of forwarding a case of a prisoner, having been convicted of having belonged to a gang of dacoits. He pleads 'guilty.' He appears to be about thirty-five years of age. An approver stated, that he had committed dacoities with him during the last two or three years, under a leader called Ram Thakoor, which the prisoner acknowledged to be true. He confessed that he had committed forty or forty-six dacoities in the districts round Calcutta, and eleven or twelve of them under a leader called Ram Thakoor. I propose that he be sentenced to imprisonment in transportation for life, having been convicted of the crime with which he is charged."

Remarks by the Nizamut Adawlut.—(Present: Sir Robert Barlow, Bart.)—"The prisoner was one of the same gang under Ram Thakoor as Haran Bagdee, who has this day been convicted and sentenced by the court. They were parties in the same dacoities, and fully confessed before the magistrate and in the sessions court. I sentence the prisoner under Act XXIV. of 1843, as a professional dacoit, under the recomendation of the sessions judge dated the 28th ultimo."

PRESENT:

SIR ROBERT BARLOW, BART., *Judge.*

GOVERNMENT

versus

HARAN ALIAS HARA TALY OR BAGDEE.

1852.

February 16.

Case of HARAN *alias* HARA TALY or BAGDEE.

The prisoner confessed before the magistrate and sessions judge, to having taken part in several dacoities. He was sentenced under Act XXIV. of 1843.

CRIME CHARGED.—Having belonged to a gang of dacoits within the meaning of Act XXIV. of 1843, Section I.

Committing Officer, Mr. S. Wauchope, magistrate of Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs.

Remarks by the additional sessions judge.—"I have the honor of forwarding a case of a prisoner, having been convicted of having belonged to a gang of dacoits. He pleads 'guilty.' He appears to be about thirty-five years of age. An approver stated, that he had committed eight or nine dacoities with him under a leader called Ram Thakoor, which the prisoner acknowledged to be true. He confessed before me, that he had committed dacoities for sixteen or seventeen years in the districts round Calcutta, under different leaders, one of whom was called Ram Thakoor. I propose that he be sentenced to imprisonment in transportation for life, as I find him guilty of the crime with which he is charged."

Remarks by the Nizamut Adawlut.—(Present: Sir Robert Barlow, Bart.)—"The prisoner, both before the magistrate and the sessions judge, gave details of the several dacoities in which he had taken part. The approver, Sindhoo Moytee, named him as having been present at the dacoities, and the prisoner also confirmed the approver's statements. The occurrence of dacoities in the villages Rajhat and Majher, was also established by reference to the criminal records of Hooghly and Baraset. The prisoner was released by this court in another case of dacoity for want of proof on the 27th May last.

"His repeated confessions, particularizing the circumstances of several dacoities in which he had been concerned, justify his conviction as a professional dacoit, under Act XXIV. of 1843. I, therefore, confirm the sentence of transportation for life, which the sessions judge proposes to pass on the prisoner."

PRESENT:

SIR ROBERT BARLOW, BART., *Judge.*

GOVERNMENT

versus

GOPAL MOOKERJEE.

1852. February 17.

Case of GOPAL MOOKERJEE.

The prisoner's confessions before the magistrate and the sessions judge, prove him to be a professional dacoit. He is sentenced under Act XXIV. of 1843.

CRIME CHARGED.—Having belonged to a gang of dacoits, within the meaning of Act XXIV. of 1843, Section I.

Committing Officer, Mr. S. Wauchope, magistrate of Hooghly,

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 8th August 1851.

Remarks by the sessions judge.—"I have the honor of forwarding a case of a prisoner having been convicted of having belonged to a gang of dacoits. He pleads 'guilty'. He appears to be about thirty-five years of age. An approver stated that he had committed ten or twelve dacoities with him under a leader called Ram Thakoor, which the prisoner acknowledged to be true. He confessed that he had committed thirty or thirty-two dacoities in the districts round Calcutta, under a leader called Ram Thakoor. I propose that he be sentenced to imprisonment in transportation for life, as I find him guilty of the crime with which he is charged."

Remarks by the Nizamut Adawlut.—(Present: Sir Robert Barlow, Bart.)—"The prisoner in his confessions gives the particulars of some of the dacoities in which he had been concerned in the vicinity of Calcutta. He has been named by other parties convicted of dacoity, of having joined them, and has himself named the same parties. The charge on which he is arraigned 'of having belonged to a gang of dacoits' within the meaning of Section I. Act XXIV. of 1843, is fully established against the prisoner. I sentence him, as recommended by the sessions judge, to imprisonment for life in transportation."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

SHEIKH TORABDEE (No. 2, APPELLANT), SHEIKH PULTOO (No. 3, APPELLANT), SHEIKH NOCKAH ALIAS NUCKEE (No. 4, APPELLANT), SHEIKH DANAH (No. 5, APPELLANT), SUDDORAM ALIAS SUDDOO GHOSE (No. 6), HURREE GHOSE (No. 7, APPELLANT), DIPRAM GHOSE ALIAS DIP GHOSE (No. 8, APPELLANT) AND NILRAM GHOSE (No. 9, APPELLANT).

1852.

February 18.

Case of SHEIKH TORABDEE and others.

The sentence of the sessions judge, in a case of affray affirmed by the Nizamut Adawlut in appeal.

CRIME CHARGED.—1st count, wilful murder of Sheikh Magha; 2nd count, affray attended with the culpable homicide of Sheikh Magha; 3rd count, being accomplices in the crimes charged in the 1st and 2nd counts; 4th count, privity to the crimes charged in the 1st and 2nd counts; 5th count, aiding and abetting in the crimes charged in the 1st and 2nd counts.

CRIME ESTABLISHED.—Nos. 2, 4, 8 and 9, aiding and abetting in an affray attended with homicide, and Nos. 3, 6 and 7, affray attended with homicide.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 13th January 1852.

Remarks by the sessions judge.—" From the evidence of three witnesses and the admissions of the prisoners themselves, it appears that a quarrel arose about a crop of rice between Hurree Ghose and Pultoo, an affray occurred, and in it a man named Magha, was killed. The witnesses say that after blows had been exchanged Suddoram Ghose ran away, and was pursued and struck by the deceased; that Suddoo turned round and struck the deceased a blow, from the effects of which he died the next day. These witnesses accompanied Hurree Ghose to the field, but deny that they took part in the affray.

" Pultoo and his party declare that Hurree Ghose and his, attacked them and beat them, and from the effects of a blow Magha's death was caused.

" Hurree Ghose and his party assert that Pultoo attacked them, and that they do not know how Magha was killed.

" They called witnesses to prove they had committed no assault, but they could say nothing in their favor."

Sentence passed by the lower court.—Prisoners Nos. 2, 4, 5, 8 and 9, to be imprisoned without irons for three (3) years and to pay a fine of rupees (20) twenty, and prisoners Nos. 3, 6 and 7, to be imprisoned for four (4) years and to pay a fine of rupees

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(25) twenty-five, on or before the 31st January 1852, or in default of payment, to labor until the fine be paid, or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—" The prisoners have appealed, but have urged nothing to exculpate themselves from the charge. The sessions judge has not made sufficient inquiry into the cause which led to the affray, but, as far as can be ascertained from the magistrate's record, it would appear that the land had been tilled by Hurree Ghose's party and sown by the other party, and that the fight ensued for the crop which Hurree Ghose went with his followers to cut, and was resisted in so doing by Kulloo's party, both parties being armed with clubs. The evidence to the prisoners being all concerned in the affray is quite conclusive, and I see no reason to interfere with the finding and sentence of the sessions court."

PRESENT:

J. R. COLVIN, ESQ., *Judge*.

SADHOO CHURN SEIT

versus

JADUB DASS (No. 2), KANDON ALIAS KANOO (No. 3), LANGRAH ALIAS CHAMOO (No. 4), DOMUN (No. 5), MOHUN (No. 6), PHOLOWAN ALIAS POHOLAD (No. 8), BOOCHUN (No. 9), SOHUN (No. 15, APPELLANT), CHAURIA (No. 17), BOORUN (No. 18) AND GOPAUL (No. 19).

1852. February 19. Case of SOHUN, (appellant), and others.

A prisoner convicted of dacoity, acquitted, as there was no sufficient proof against him of participation in the dacoity, and he had not been tried on a charge of knowingly having stolen property in his possession. Remark that he could still be committed and tried on the latter charge, and that the sessions judge could, in future, direct the addition of appropriate charges to a calendar, under the Circular Order, No. 13, of 14th November 1851.

CRIME CHARGED.—Nos. 2 to 6, 8, 9 and 15, dacoity, with plundering of property valued at rupees 2,302-13; and Nos. 17 to 19, knowingly receiving and keeping the stolen property in the above case.

CRIME ESTABLISHED.—Nos. 2 to 6, 8, 9 and 15, dacoity, with plundering property, valued at rupees 2,302-13; and Nos. 17 to 19, knowingly receiving and keeping the stolen property in the above case.

Committing Officer, Captain G. N. Oakes, 1st class assistant to Governor General's Agent, Manbhoom, Hazareebagh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebagh, on the 27th November 1851.

Remarks by the deputy commissioner.—" It appeared that on

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the night of the 23rd April, the prosecutor's house was entered by a gang of dacoits, who carried off a considerable amount of property without other aggravating circumstances. On the following morning the prisoners Nos. 2, 3, 5 and 6, were proceeding towards Jholda, having with them a portion of the stolen property, and were apprehended by the *ghatwals*. Before the police officers Nos. 2, 3 and 5, confessed, and a clue was obtained which led to the apprehension of No. 4, who also confessed. Nos. 2, 3 and 4, also confessed before the principal assistant. No. 6 was taken with the property in his possession. Nos. 8 and 9 were seen in company with the prisoner beforementioned, and in their houses some articles of property belonging to the prosecutor were found. No. 9 had also been named by one of the confessing prisoners. No. 15 was named by one of the confessing prisoners as being concerned in the actual dacoity; and in the house of his relative, the prisoner No. 17, some brass vessels were found, which belonged to the prosecutor, and which had been left with No. 17 by No. 15, and neither could give a satisfactory account of them. In the houses of Nos. 18 and 19, some stolen property was found and identified. The jury found the prisoners guilty as charged; in which I concurred."

Sentence passed by the lower court.—Nos. 2 to 6, 8, 9 and 15, each seven (7) years' imprisonment, with labor and irons, and Nos. 17 to 19, each four (4) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"The prisoner* No. 15, Sohun, must be acquitted,

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* The case of Sohun, (No. 15,) was noticed by the court, on reviewing the monthly statement of convictions, as follows, and the proceedings were, as will be seen, sent for :—

Extract, paragraph 3, from a letter No. 27, dated 5th January 1852, from the Register of the Nizamut Adawlut to the Deputy Commissioner of Hazareebagh.

"The court observe, that statement No. 6 does not show the grounds on which Sohun, (prisoner No. 15), was convicted of the actual dacoity. There seems to be no difference between the proof against him, and against No. 17, who has been convicted of knowingly receiving stolen property, beyond the circumstance of No. 15 having been named by one of the confessing prisoners, which could not be evidence against him. They request that you will submit a further report with reference to the above remarks."

Extract, paragraph 4, from a letter No. 4, dated 17th January 1852, from the Deputy Commissioner of Hazareebagh to the Register of the Nizamut Adawlut.

"In regard to the prisoner Sohun, (No. 15,) the evidence is correctly stated. The difference between his case and that of the prisoner No. 17, is this:—Sohun was not charged with receiving. There was no evidence

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as there is clearly no sufficient proof against him of participation in the dacoity, and he was not tried on a charge of knowingly having stolen property in his possession.

"He can still, of course, be committed and tried upon that charge, notwithstanding his acquittal on the charge of dacoity.

"In future, the operation of the Circular Order, No. 13, of 14th November last, will enable obviously appropriate charges to be at once inserted in the calendar by the orders of the officer trying the case as a sessions judge."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

TRIALS NOS. 3 AND 4.

BROJOLAUL PATTAUCK

versus

KONKA, MUNNOOA, BOOCHUN, SOODHEE AND GHEENDHOO.

1852.

February 19.

Case of KONKA and others.

The prosecutor's house was thrice plundered by dacoits. The sentences passed in the sessions court, upon the prisoners were all confirmed by the Nizamut Adawlut on appeal, except as regarded one prisoner, the sentence passed upon whom was reduced.

CRIME CHARGED.—1st count, dacoity, with plundering of property, valued at rupees 3,862-8; 2nd count, receiving stolen

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of his being a receiver, but certain brass vessels Nos. 7 to 9 inclusive, were found in the house of the prisoner No. 17. These vessels were stated by the prisoner No. 17 to have been left with him by No. 15, and No. 15 in his defence alleged, that these vessels were his own property. But the prosecutor proved that they were his property. Also the prisoner No. 15 had been named by one of the confessing prisoners as concerned in the actual dacoity. On this evidence, the jury found the prisoner No. 15 guilty as charged. The evidence is not absolutely conclusive, but it has some weight, and I therefore allowed the verdict to stand. The prevalence of dacoity at present is notorious, and the difficulty of suppressing it is very great. Therefore, seeing no better course, I consider that whatever evidence satisfies an unbiased and intelligent jury, should, as a matter of necessity, be accepted."

Extract, paragraphs 3 and 4, from a letter No. 127, dated 30th January 1852, from the Register of the Nizamut Adawlut to the Deputy Commissioner of Hazareebagh.

"The court observe, that there was a mistake in the absence of a count of commitment for the receipt or possession of stolen property against the prisoner Sohun. You should hereafter in taking up, or in the course of trying a case, cause such omission to be supplied, with reference to the Circular Order No. 13, of the 14th November last. In the present instance, the court direct, under Section III. Regulation XIX. of 1848, that you will submit for their further consideration and orders, certified extracts of *all* the evidence in the trial affecting the prisoner Sohun.

"They desire me to add that you are bound, where you may see clearly that there is not evidence sufficient for the conviction of a prisoner, to act on your own judgment, and pass a sentence of acquittal, notwithstanding the verdict of a jury."

property, knowing the same to be stolen in another case of dacoity.

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CRIME ESTABLISHED.—1st count, dacoity, with plundering of property, valued at rupees 3,862-8; 2nd count, receiving stolen property, knowing the same to be stolen in another case of dacoity.

TRIAL NO. 5.
BROJOLAUL PATTAUCK
versus
KANAE SINGH, MOHUJJUR SINGH, GANGOO GOPE AND PULTOO.

CRIME CHARGED.—Dacoity, with plundering of property, valued at rupees 43-0-3.

CRIME ESTABLISHED.—Dacoity, with plundering of property, valued at rupees 43-0-3.

Committing Officer, Captain G. N. Oakes, 1st class assistant of Manbhoom.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebagh, on the 8th December 1851.

Remarks by the deputy commissioner:—

TRIAL NO. 3.—" In this case it appears, that on the 10th of July 1851, the prosecutor's house was entered at night by a gang of dacoits, who carried off property, valued by the prosecutor at rupees 3,862-8. While absconding, the villagers discharged some arrows after them, by which one of the dacoits was wounded, and the gang thereupon dropped several articles of the plundered property, which were found in the morning, and some drops of blood were visible on the ground. Shortly afterwards the police officers got information that the prisoner Boochun was wounded in the leg, and on searching his house in his absence, a piece of cloth stained with blood was found. Boochun's wife, Musst. Budnee, then confessed that her husband was engaged in the dacoity in the prosecutor's house, and she named the prisoners Konka and others, as his associates. Boochun being apprehended, confessed before the police officers, and named among others the prisoner Munnooa. Munnooa and Konka were then apprehended, and on searching their houses a brass vessel was found in Konka's house and two brass vessels in Munnooa's house. These articles were claimed by the prosecutor and were identified by witnesses. Budnee had stated in her confession that the prisoners Soodhee and Gheendhoo were habitual receivers of stolen property, and on searching their houses, some articles (82 to 7 and 8 to 11,) were found, which

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the prosecutor claimed, and which the prisoners said they had purchased recently from persons whom they named, but have not brought forward in their defence. Shortly before this dacoity, the prosecutor's house had been robbed by a similar gang, and the prosecutor had, in consequence, several persons as a guard on his premises, but when the attack was made these guards made no resistance, but concealed themselves as best they could. One of them, Nufar, in his evidence before this court and before the police officers and the principal assistant, states that he recognized the prisoners Munnooa and Konka, who were engaged in the dacoity. In like manner Khudiram witness states, that he recognized Konka and Boochun at the dacoity, and that he knew Konka before. The prosecutor recognizes the three prisoners Konka, Munnooa and Boochun. The prisoners Konka and Munnooa in their defence say, that the property found in their houses is their own, and their witnesses give evidence in support of this. Boochun and Musst. Budnee say, that their confessions before the police were extorted, but they have no sufficient proof of this. The prisoners Soodhee and Gheendhoo now deny that the property was found in their houses, or that they said they had purchased it. The jury found all the prisoners guilty as charged. I consider that the evidence justifies this verdict, except as to the prisoner Budnee, who, being the wife of the prisoner Boochun, is not responsible for his acts. Konka has been found guilty in case No. 4, of having in his possession property obtained by dacoity. Soodhee has also been found guilty of the same in case No. 4."

TRIAL NO. 4.—"The prosecutor in this case, is the same as in the preceding. Certain articles of property plundered from the prosecutor in a dacoity, which took place on the 9th March, last, were found in the houses of the prisoners Konka and Soodhee, and have been identified by the prosecutor's witnesses, and were traceable in a list made at the time of robbery. Konka in his defence said, he had purchased them at Hazareebagh and at Toondel fair. He did not produce evidence of the purchase, but several witnesses identified the things as his property. Soodhee in his defence said, that the property, a brass drinking vessel, found in his house is his own, and before the magistrate, he said this, but admitted that he had concealed it in a heap of dry Bassia flowers, for fear of thieves. The jury found the prisoners guilty, in which verdict, under all the circumstances of the case, I concurred."

TRIAL NO. 5.—"The prosecutor in this case, is the same as in the preceding. Against the prisoners Kanae, Mohujjur, Gangoo and Pultoo, the evidence is only that of recognition by five witnesses, without other collateral circumstances. Kanae and

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Mohujjur had immediately before this dacoity been acquitted in that of the 9th March, noticed in the preceding remarks. In Munnooa's house, a quilt was found, which the prosecutor claims and identifies. The prisoner brings one witness, who says, the quilt is the prisoner's. The jury find all the prisoners guilty as charged. Though the evidence is as above noticed, that of recognition only, nothing appears to cast a doubt on the motives of the witnesses, and I therefore concur in the verdict of the jury."

Sentence passed by the lower court:

TRIALS NOS. 3 AND 4.—The prisoners Konka and Munnooa to be imprisoned for ten (10) years each, with labor and irons, and Boochun to imprisonment with labor in irons for seven (7) years, and Soodhee to be imprisoned with labor and irons for five (5) years, and Gheendhoo to be imprisoned with labor and irons for four (4) years.

TRIAL NO. 5.—All the prisoners to be imprisoned with labor and irons for seven (7) years each.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—" It appears that the house of the prosecutor has been three times plundered by dacoits, *firstly*, on the 6th of March; *secondly*, on the 6th of July; and *thirdly*, on the 10th of July; and the three trials are connected with these cases. The latter case is the first in the statement.

CASE NO. 3.—" The prisoners Konka, Munnooa and Boochun, have only appealed; but I have considered the proceedings as regards all the prisoners convicted by the deputy commissioner. The evidence to the recognition of the prisoners Konka, Munnooa and Boochun, was not given before the police, until after their apprehension, which was made on the information of the prisoner Boochun's wife, and is, therefore, open to much suspicion. Moreover, the witnesses had no previous acquaintance with the prisoners, and it is not credible that they could distinguish strangers at night, in the confusion attendant on an attack made by so large a number of persons. But independent of this evidence, I concur with the deputy commissioner and the jury, in regard to the sufficiency of proof against all the prisoners. The prisoner Boochun's confession before the police is fully corroborated by the wound on his leg, the finding of a bloody cloth in his house, and his flight from the village. He implicated the prisoners Konka and Munnooa; and some plundered articles belonging to the prosecutor, and recognised by his witnesses, were found in their houses. I agree with the deputy commissioner and the jury, in discrediting the evidence adduced by them to prove that the articles in question belonged to them.

" It appears from the record, that the prisoners Soodhee and Gheendhoo are professional receivers. The articles which were

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proved to have been found in their possession have been clearly identified by the prosecutor and his witnesses, and the inconsistent and unsatisfactory explanation afforded by the prisoners regarding them, is presumptive evidence, that they knew they were stolen. I confirm the conviction of the prisoners.

CASE NO. 4.—"I concur with the sessions judge in convicting the prisoners Konka and Soodhee, of knowingly receiving stolen property. The conviction of the prisoners in the former case, and the finding of the articles (which are mentioned in the list of the property plundered in this case,) in the possession of the prisoners, and their identification by the prosecutor and his witnesses, raise such a strong inference of guilty knowledge, as altogether to rebut the evidence for the defence. I confirm the convictions.

CASE NO. 5.—"The proof against the prisoners Kanae Singh, Mohujjur Singh, Gangoo Gope and Pultoo Booeah, rests on the evidence of three eye-witnesses who depose, that they recognised the prisoners at the time of committing the dacoity. The prisoners were apprehended in the preceding case, and acquitted, and the witnesses speak with the more certainty to their recognition in consequence of their having seen them on that occasion. The sessions judge and the jury deem the evidence to be trustworthy. The prisoners have not appealed, nor did they urge anything on their trial which impairs its weight and value generally. The evidence against Munnooa, is not sufficient to justify his conviction in this case. The single article, an old quilt, found in his house, is of a common kind, not capable of recognition; and there is nothing else to fix him with participation in the robbery. I accordingly reduce the sentence passed upon him, as it has been founded on two convictions, to seven (7) years' imprisonment, and confirm the sentences passed upon the other prisoners."

PRESENT:

A. J. M. MILLS, AND R. H. MYTTON, } ESQRS., *Officiating Judges.*

RAGHOO KULLOO

versus

SUBOO KULLOO (No. 2), BANNOO SHEIKH (No. 3), KUBEER KULLOO (No. 4) AND KANYE JOLLAH (No. 5).

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Case of SUBOO KULLOO and others.

The prisoners Nos. 2, 3 and 5, convicted of being accomplices in murder, were, in concurrence with another judge, sentenced to transportation and imprisonment for life.

On a difference of opinion as to the extent of guilt, and the sentence which should be passed on the prisoner No. 4, the case was sent on to a third judge.

Held that in a case of murder, in which several prisoners are liable to capital punishment, and it is not necessary for the ends of justice to carry that sentence into effect as regards all, it is legitimate, in the absence of legal proof of who was the most guilty, to rely on the confessions of parties concerned, in making a selection for example.

CRIME CHARGED.—1st count, wilful murder of Jhapa Aurut, wife of the prosecutor; 2nd count, Nos. 2 and 3, aiding and abetting in the murder of Jhapa Aurut; and, 3rd count, privity after the fact.

Committing Officer, Mr. J. J. Ward, joint magistrate of Pubna, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 1st January 1852.

Remarks by the sessions judge.—"The reason for this reference is, that the *futwa* convicts only two of the prisoners, when, in my opinion, there is the strongest presumptive evidence that all four were present when the murder was committed, and were accessaries thereto; and as accessaries, both before and after the fact, I would, in supersession of the *futwa*, convict them all.

"The prosecutor deposed that he left his wife in Bhadoon with her father, and afterwards heard she had died of cholera, and had been buried without his knowledge; that he was about going to perform her *fatea* when he learnt the darogah had gone to his father-in-law's house; after this he heard she had been murdered; that when he left his wife with her father she was not ill; that he lived only one *puhur* or three hours distant; and that the reason he left his wife with his father-in-law was she was unchaste and had gone astray (or run away from him) and on this account his father-in-law had taken her into his house.

"The prisoners all pleaded 'not guilty.'

"The first witness (the deceased's mother, and wife of the prisoner No. 4, and from such connexion a most reluctant one,) first deposed, that she knew nothing, but from expressions she let drop, the following evidence was elicited from her by means

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of questions: that the deceased came to her house with her husband; that the latter went to his own house in Aghun, and three days after she died; that the prisoners Nos. 3 and 5 were not related to her, but slept in the verandah, as her daughter had run away, and they were guarding her; that she had run away on the Saturday and that night had been brought back from the house of Muddoo Jollah; that she had been married to the prosecutor ten or twelve years and her age was ten or twelve. (It will be afterwards seen that deceased must have been much older.) That she washed the deceased's body before burial, and at that time saw no blood on her mouth, or any marks on the body; that the prisoners buried her.

"The next witness (also an unwilling one) was the mother of the prisoner No. 4, and grand-mother of the deceased. She deposed that hearing her grand-daughter had been attacked with *cholera*, she went and saw her asleep, and the prisoners (present) applying heat to her body; that being ill of fever herself she did not remain, and in the morning she was informed that her grand-daughter had died, and she saw her lying dead; that Nos. 3 and 5 were great friends of her son, and had therefore gone to the house; that her grand-daughter had run away to Muddoo Jollah's house, and had been brought back by the prisoners, who with four others buried her. First said, she could not say who washed the body, and then that the deceased's mother had done it. Then she denied seeing the corpse, and afterwards that she saw it when taken to be buried. Saw no marks on the body. That she does not know what her grand-daughter died from.

"Now this evidence proves three facts—*first*, that the deceased was in house of her father, No. 4, and had been left there by her husband; *second*, that she ran away from the house, and was brought back by the prisoners; and *third*, all four, when she died, assisted in burying the body. In short, both before her death, and till she was buried, all four prisoners had either charge of the deceased when alive, or of the body after her death, until the same was committed to the earth by them, and, according to the evidence of the deceased's mother, the prisoners Nos. 3 and 5 were employed, or assisted, to guard her.

"The next witness, Meelun Jollah, a neighbour, deposed, that he was sleeping with Muddoo, his cousin, at his own house, when about one *puhur* of the night remaining, or early on Saturday morning, the deceased came to his house, and said her father and uncle had both beaten her, and therefore she had fled to his house for protection; that he let her in, when she sat down. In the meantime the prisoners came to his house, and he told her father that she was there, and asked at the same time why they beat her. No. 2 then said, 'bring her out, she

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'shall not be ill-treated as long as I remain.' On this he made her over to them. Shortly after, he and Muddoo went and saw the deceased bound hand and foot in her father's cooking shed. Next day heard she had run away again, and at night Kubeer called out she had died of cholera, and on their going to inquire when she died, he (Kubeer) threatened them; and suspecting something wrong he told the chowkeedar.

"Deceased did not tell him why her father and uncle had beat her; that he did not assist to bury her, nor did he, at the time of her burial, break her bracelets.

"Witness No 18, Muddoo, confirms the above in every particular, and adds, that the deceased said she had been beaten because she ran away. He did not assist to bury her.

"Now the testimony of these two witnesses fully proves, that the deceased complained of being maltreated by her father and uncle, the prisoners Nos. 2 and 4; that all four came and took her away from the house of witness No. 3, and that the prisoner No. 3, then promised she should not be again ill-used, and both afterwards saw deceased with her hands and feet tied in her father's cooking shed; and when they, (the witnesses,) went to ascertain the cause of her death, both were threatened by the prisoner No. 4.

"The next witness No. 17, deposed that he was sent by the prisoners to call the *moollah*, but before he came the prisoners had buried the body.

"This witness is brother of No. 4, and therefore uncle to the deceased, and it is reasonable to suppose he could have no motive for giving evidence that would implicate his own brother. But let us now see why there was such a hurry in burying the corpse.

"The acting darogah of Muttra, a very intelligent officer, who exhumed the body (and was careful that the *koduli* did not injure or touch the corpse) deposed, that when the cloth over it was removed, he found blood running from the nose, mouth and left ear; that there was a swelling on the left temple, over the eye, a black mark on the left ribs or side, and around the neck there was the mark of a cloth or of one being applied to the neck, and a livid mark below the chin on the windpipe. Now these appearances *alone* raise a supposition that deceased came to her death by foul means, and in the opinion of the darogah she must have been strangeled.

"Mr. Ellis, the sub-assistant surgeon, deposed that the corpse was too far gone to hold a *post mortem* examination, and all he saw was blood about the mouth. He considered the deceased was twenty-five years of age; the darogah that she was seventeen; and the prosecutor deposed she was fifteen or sixteen years of age, and had borne a child, who died in the month of Bysakh last.

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"I need not translate the confessions made before the police, and repeated before the joint magistrate, as they must be read, but it will be seen, the prisoners Nos. 2 and 3 admitted they were present when No. 4 strangled the deceased with her own cloth. The confessions of course can only affect the prisoners Nos. 2 and 3, but they at the same time confirm the darogah's account of the appearance of the body, when exhumed by him; and it may be assumed that being in his house, the deceased *must* have been strangled, or killed, with the connivance and consent of the prisoner No. 4, her own father, who, whatever her failings or misconduct might have been, was not only her natural protector, but had been especially charged with her custody by the prosecutor, which charge he neglected, and then buried the body (though it exhibited appearances of foul play) without ever giving any intimation of her death to his son-in-law or to the police. Nor would he even wait for the *moollah*, or priest, to say over it the usual prayer at the time of burial.

"The prisoners Nos. 2 and 3 merely in their defence, denied committing murder, or that they had made any confessions.

"No. 4 (in his defence) also denied murdering his daughter, adding she died of cholera; but not a single witness could speak to the cause of her death, only that they *heard* from him that she had died of cholera.

"No. 5 set up an *alibi*; and this his three witnesses in a manner proved, but I do not either admit the plea, or credit the evidence in support of it. He is brother of No. 3, who confessed to being present when the deceased was strangled, and then helped to bury her.

"I think after the above detail of the evidence (which, with the exception of that of the two women, was consistent throughout,) there can be no doubt whatever that all the four prisoners had a hand, or were accessaries to, the murder of the woman Jhapa Aurut.

"With a *futwa* of acquittal as regards two of them, and a conviction of privity after the fact *only* against the other two, it would not do for this court to suggest a capital sentence against any of the prisoners; but all four, in my opinion, should, for being present and accessaries to the murder, both before and after the fact, be sentenced to imprisonment in transportation for life, or certainly the prisoner No. 4 should be so sentenced.

"With this opinion I beg to leave their case in the hands of the court."

Remarks by the Nizamut Adawlut.—(Present: Sir Robert Barlow, Bart., and Messrs. A. J. M. Mills and R. H. Mytton.)—MR. A. J. M. MILLS.—"That the deceased met her death by violent means I entertain no doubt; and from the *post mortem* appearances described in the inquest paper and sworn to by the darogah and the subscribing witnesses, the presumption is

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strong that strangulation was the cause of death, a circumstance which corroborates the truth of the confessions of the prisoners Nos. 2 and 3 that she was strangled.

"It is in proof that the deceased was unchaste; that her husband brought her on this account to her father, the prisoner Kubeer's house; that he left her there three days before her death; that on the night of Friday she left her father's house and sought the protection of the witness Meelun Jollah; that the four prisoners brought her back again shortly afterwards; that she was seen the same night bound hand and foot in Kubeer's cook-house; that the prisoner Kubeer gave out the next evening that she died of cholera; and lastly, that the prisoners buried the body in a hurried and unusual manner, without ever informing the husband of the death of his wife. These facts, which strongly support the statements of the prisoners Nos. 2 and 3 in their confessions, taken with the marks of violence on the body of the deceased, afford a violent presumption of the guilt of all the prisoners. The confessions of the prisoners Nos. 2 and 3 before the darogah, and repeated before the magistrate, are proved to have been freely and voluntarily made. Though the prisoners disavow a direct participation in the act, yet they admit they saw it perpetrated by the prisoner Kubeer. Suboo states in his confession, that Kanye held the deceased's legs, and Bannoo gagged her, while Kubeer strangled her. Bannoo on the other hand says, that Suboo and Kubeer both concerted and committed the murder. He screens Kanye because he is his brother. The prisoners Nos. 2, 3 and 4, make no defence; and I agree with the sessions judge in rejecting the *alibi* set up by the prisoner No. 5. I would convict all the prisoners on violent presumption of the wilful murder of Musst. Jhapa. The motive to the murder is revealed in the confession of Suboo. It seems to have been deliberately planned and committed in order to avoid the shame and disgrace, to which Kubeer and his family were being continually exposed by the deceased's improper conduct. Kubeer was the natural protector of the deceased in the absence of her husband. The facts of the case point to him as the principal in the murder, and confirm the confessions in so far as they implicate him as such. There can be no reasonable doubt that he either instigated or perpetrated the foul act; and seeing no extenuating circumstances in the case I would sentence him to suffer death. I would imprison the three other prisoners for life in transportation."

SIR R. BARLOW.—"The Mofussil and foujdaree confessions of the prisoners Suboo (No. 2), and Bannoo (No. 3), clearly establish that they were present when the deceased Jhapa was killed. No doubt she met with a violent death. She was quite

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well up to the period of her being shut up in the cook-room, and the corpse, on exhumation, some twenty-four hours after it had been hurriedly buried by the prisoners with the assistance of Kubeer (No. 4), and Kanye (No. 5), bore evident marks of strangulation. The prisoners Nos. 4 and 5, did not make any confessions, but the evidence of Meelun Jollah and Muddoo Jollah, proves that all four prisoners carried away the deceased to the house of prisoner No. 4, whence she never came out alive. The story that deceased died of cholera is quite unsupported by the evidence cited by the prisoner No. 4, and the strongest suspicion of an unnatural death is afforded by the hurried and clandestine burial which took place. The appearances at the inquest sworn to by the police darogah are corroborated by the confession on the record; and the whole of the circumstances satisfy my mind that the deceased was killed. I cannot, however, concur in passing a capital sentence on the prisoner, No. 4, Kubeer Kulloo. There is no evidence in my opinion on the record which brings home a greater degree of guilt to him than to the other prisoners. There is the strongest presumption that all the prisoners were accomplices in the murder, and I would sentence all, as recommended by the sessions judge, to imprisonment for life in transportation.

"The sessions judge records 'that all four prisoners were '*present* when the murder was committed.' The evidence fully establishes the fact, and brings them all under the class of accomplices, not of '*accessaries* thereto.'

"The case must go on for a third voice, as there is a difference between Mr. Mills and myself regarding the prisoner Kubeer Kulloo."

MR. R. H. MYTTON.—"This case has come before me in consequence of a difference of opinion as to the measure of punishment of the prisoner Kubeer Kulloo. Mr. Mills would sentence him to suffer death; Sir Robert Barlow to transportation for life. I shall confine my consideration of the case to this point.

"The murder appears to have been committed with great deliberation and with prolonged cruelty. The unfortunate woman was tied hand and foot and bound to a post for some eighteen hours, then knocked down, held by some of the prisoners, and strangled. All the participators in such a crime might, with no impropriety, be sentenced to death; but it may not be necessary to deprive so many persons of life for the sake of example.

"The murder took place in Kubeer's house. He was the natural protector of the deceased; and the confessions of the two prisoners Suboo and Bannoo, declare him to have done the deed with his own hands while others held the deceased.

"The confessions of accused are not evidence against their accomplices; but where a crime has been committed by a number of culprits, and it is not deemed necessary to the ends of justice to sacrifice the lives of all, it is natural, and, in my opinion, perfectly legitimate, to look to them for information, upon which to make a selection in the absence of proof on which to ground it.

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"I therefore concur with Mr. Mills, in sentencing the prisoner Kubeer to suffer death."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

BOLEEJUDDEE

versus

AFTABUDDIN (No. 2), SUFFERUDDIN (No. 3), MAHABUDDY (No. 4), JOHEERUDDY (No. 5), AZIMUDDY (No. 6), MOHEEJUDDY (No. 7), ALEE MAHOMED (No. 8), RUHEEMUDDY (No. 9), MOLIAM (No. 10), MOHEEJUDDY 2nd. (No. 11), RASAMUDDY (No. 12) AND SHURRABUDDEEN (No. 13).

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Case of AFTABUDDIN and others.

The conviction of the prisoners upon a charge of culpable homicide, and sentence passed upon them by the sessions judge, affirmed by the Nizamut Adawlut.

CRIME CHARGED.—1st count, accomplices in the wilful murder of Lall Gazee; and 2nd count, affray attended with murder of Lall Gazee, and being accessaries before and after the fact to the wounding of Mungul and Dhan Gazee.

CRIME ESTABLISHED.—Accomplices in the culpable homicide of Lall Gazee.

Committing Officer, Mr. E. F. Radcliffe, officiating joint magistrate of Noacolly, Tipperah.

Tried before Mr. H Stainforth, sessions judge of Tipperah, on the 21st November 1851.

Remarks by the sessions judge.—"The prosecutor and Aftabuddin are sharers in a talook, another sharer was one Waris, who died some years ago. Prosecutor avers possession of this share, through transfer by the widow of Waris, while Aftabuddin declares it to have been inherited by him from his cousin, the said Waris, and it was when prosecutor, the late Lall Gazee, and others went to cultivate the lands, that the affray, in which Lall Gazee lost his life, and Dhan Gazee and Mungul were wounded, took place.

"The prosecutor admits that two days before the affray, his opponents went and ploughed the land. and each side complained to the magistrate; but the complaint of Aftabuddin was dismissed, and he and the other persons committed, were made over to this court for trial.

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" Aftabuddin's defence is, that on the day previous, the prosecutor wanted to take possession of his land through Dhan Gazee, when he went to the thanna, but the darogah did not give him assistance, because he came at night; that he had started again for the thanna, but heard that Dhan Gazee had plundered his house and was ploughing his land, when he went home and saw Lall Gazee (dead), Mungul (witness No. 2), Shurrabuddeen (No. 13,) and Mahabuddy (No. 4), in a helpless state from assault, but that he assaulted no one. He declined the evidence of the two witnesses called by him.

" Sufferuddin's (No. 3,) defence is, that prosecutor's party attacked the house of his uncle Aftabuddin, and interfered in his land, when he, the prisoner, opposed their doing so and was beaten. He called no witnesses.

" Mahabuddy (No. 4,) who is brother-in-law of Aftabuddin, made a similar defence to that of Sufferuddin, and declined calling the evidence of the witnesses called by him.

" Joheeruddy (No. 5,) pleaded *alibi*, and caused the evidence of two of the witnesses whom he had called to be taken. Of these, one denied knowledge of the alleged *alibi*, while the evidence of the other was not a clear attestation of it.

" Azimuddy (No. 6,) pleaded that he had been accused, because he had been named as a witness in the complaint preferred by Aftabuddin. He called no witnesses.

" Moheejuddy (No. 7,) declared the charge false, but called no witnesses.

" Alee Mahomed (No. 8,) pleaded 'not guilty,' and made no defence.

" Ruheemuddy (No. 9,) pleaded *alibi*, but of his three witnesses, one denied knowledge of the alleged *alibi*, while the other two did not prove the date of his absence.

" Moliam (No. 10,) pleaded *alibi*, but the evidence of his witnesses was similar to the testimony of those called by the preceding prisoner.

" Moheejuddy (No. 11,) pleaded 'not guilty.' Had made no defence.

" Russamuddy (No. 12,) pleaded *alibi*, and he caused the evidence of one witness to be taken who did not support his plea.

" Shurrabooddeen (No 13,) pleaded *alibi*, but his witnesses could not fix the date of his alleged absence.

" Eight eye-witnesses have given evidence in this case. Some of them are connected with the prosecutor, but the presence of the prisoners seems to me established, and their participation in the assault is attested, and is, in my opinion, proved.

" The evidence shows that Lall Gazee died of the injury received by him, and the blow which caused his death is sworn

by five witnesses to have been inflicted by the bamboo of Ruhee-muddy. I have accordingly deemed him the most guilty person, and sentenced him to four (4) years' imprisonment with labor, commutable with a fine of rupees (60) sixty. Aftabuddin, the leader, has been sentenced to imprisonment for three (3) years with labor, commutable with a fine of rupees (45) forty-five, and the rest to imprisonment for two (2) years with labor, commutable with a fine of rupees (30) thirty each."

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Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"Eight prisoners have appealed. I have gone through the proceedings with much care, and find that each of the prisoners convicted was identified by at least two witnesses, who have consistently deposed to seeing them aiding and abetting in the assault on the deceased, and on the witnesses Dhan Gazee and Mungul. They named them in their statements at the thanna, and identified them at the trial. The *alibis* set up by the prisoners have completely failed. I see no reason to interfere with the orders of the sessions judge."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

PETUMBER MOOKHOPADYA (No. 1), ARMON CHOWKEEDAR (No. 2, APPELLANT) AND RAMDHUN KURMOKAR (No. 3).

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Case of ARMON CHOWKEEDAR (appellant) and others.

A chowkeedar convicted of being an accessary after the fact to a highway-robbery, by giving false information, sentenced to two years' imprisonment; sentence confirmed on appeal.

CRIME CHARGED.—No. 1, 1st count, highway-robbery, in which gold weighing 51 sicca weight, 6 annas, valued at rupees 770-8, was plundered from the prosecutor; and, 2nd count, receiving and possessing portions of the above stolen property, knowing it to have been such. No. 2, being an accessary after the fact to the crime above-mentioned, inasmuch as he did, on or about the 9th September last, in or near the village of Sanadanga, Lukheepore, in the jurisdiction of thanna Nowhazaree, while holding the office of police chowkeedar, receive the sum of rupees 20, from the prisoner No. 3, as a bribe for the concealment of the aforesaid crime, and did, in fulfilment of the condition on which he received such bribe, make a false report to his superiors of the occurrences connected with the crime, thereby aiding and comforting to the best of his ability, prisoner No. 1, and No. 3, being accessary after the fact, inasmuch as he did, at the time and place mentioned in the 3rd charge, aid and assist the prisoner No. 1, *viz.*, by administering a bribe of rupees 20 to prisoner No. 2, for the purpose of inducing him to

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conceal the crime of prisoner No. 1, and pursuading and advising him to make a false report of the case to the officers of the police thanna of Nowhazaree.

CRIME ESTABLISHED.—No. 1, highway-robbery; No. 2, being accessary after the fact in a case of highway-robbery, inasmuch as he, being a chowkeedar, endeavoured to conceal the crime by making a false report for a bribe of rupees 19; and No. 3, being accessary after the fact in a case of highway-robbery, inasmuch as he gave a bribe of rupees 19 to Armon Chowkeedar, and induced him to conceal the crime.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 23rd December 1851.

Remarks by the additional sessions judge.—"On the 10th of September last, a man called Dhurrum Dass was going from Calcutta to the house of his master, Ramdhun, (prisoner No. 3), at Batsola, taking with him three ingots of gold. When he arrived near the house of Abdool Mistree, about a mile from his master's, he was attacked by two men, one of whom held him, and the other robbed him of the gold. He called for assistance and ran after one man, *viz.*, the prisoner No. 1, who was apprehended, and an ingot of gold, worth rupees 528-12, was recovered from him. The man was given in charge to the chowkeedar, (prisoner No. 2), who did not take him direct to the thanna, but waited until the morning; and in the meantime Ramdhun, (No. 3), having heard of the affair, came to the chowkeedar and gave him rupees 19 or 20 to make a report at the thanna favorable to the thief, who had been his servant and is a Brahmin. The chowkeedar did report in his favor, but the report was not committed to writing, and when he had made it he was let go to his home. Dhurrum Dass also would have concealed the crime of Petumber, but the darogah had his suspicions, owing to the dirty and tattered state in which Petumber was, and on putting questions, the truth was made manifest; and he made a true statement of the circumstances on oath. The capture of Petumber with the ingot of gold on him, is proved by the evidence of several witnesses, besides which he confessed before the officiating magistrate that he was one of a party who attacked Dhurrum Dass and robbed him.

"The evidence against the prisoners, Nos. 2 and 3, is as follows:—

"Witnesses Nos. 14 and 16 state that rupees 20 were proposed to be given by Ramdhun to the chowkeedar; Dhurrum Dass said that rupees 20 were given to him as a present, rupees 17 were given up by him from his house; and before the magistrate he acknowledged that he received rupees 19, but gave one rupee to

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each of two burkundauzes. There is also the circumstance of twenty-three brass medals to the memory of the late Duke of York, having been found on the prisoner Petumber, which the chowkeedar appropriated to himself. No party will claim these, as they are suspected to be forged gold mohurs. Both prisoners in their defence allowed that the money was paid, but only as a present. The only circumstance in favor of Armon is that the parties were willing to compromise the case; but as it is forbidden, by Regulation XXII. of 1793, to darogahs to allow parties to do so, the chowkeedar ought not to have allowed it, and particularly for a bribe. In favor of Ramdhun it may be said that he was afraid of losing his ingot of gold, or at any rate of being deprived of the use of it until the case might be disposed of. He was the only injured person, and Petumber had received much ill-usage when he was apprehended. In awarding his punishment, I took into consideration his heavy loss from the robbery, and the confiscation of the money he had given to the chowkeedar."

Sentence passed by the lower court.—No. 1, nine (9) years' imprisonment with labor and irons, including the two additional years awarded in lieu of corporal punishment. No. 2, two (2) years' imprisonment with labor, and No. 3, two (2) months' imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner Armon has appealed, urging that he gave a true report at the thanna. This he may have done, but after the truth was discovered. The facts proved on trial are sufficient to sustain the conviction. The appeal is therefore rejected."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

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Case of Usman Talookdar and others.

The Nizamut, in concurrence with the sessions judge, convict the prisoners of wilful murder, but as the offence was not of that deliberate and malicious character which calls for a capital sentence, sentenced the principal to imprisonment for life in transportation, and the other prisoners to fourteen years' imprisonment with labor and in irons.

The court remark that the conviction of prisoners as accessaries was incorrect, as he who is present, aiding and abetting in the commission of a felony, in the legal sense of the word, is either an accomplice or a principal. See Circular Order, No. 8, Vol. IV.

DHUNYE PARAMANICK

versus

USMAN TALOOKDAR (No. 2), DEENA JOLLAH (No. 3), TUSHEE MUNDUL (No. 4), NEEAMUT MUNDUL (No. 5) AND NUBBOO SHAH (No. 6).

CRIME CHARGED.—Murder of Buktar Paramanick.

Committing Officer, Mr. A. Littledale, magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 21th January 1852.

Remarks by the sessions judge.—"The reason for this reference is, that although the *futwa* only convicts the prisoners of attacking the prosecutor's father's house, and beating the deceased, who died in consequence of such beating, there can be no question of the offence amounting to murder, and as such, the punishment of the prisoners is beyond my competence.

"I shall, in the first place, give an abstract of the evidence of the prosecutor, one of the deceased's sons, his widow, and another son, as all these were inmates of the house, on the night of the attack, when the deceased was beat.

"The prosecutor deposes he was sleeping with his younger brother in a house when ten persons entered, and after beating him passed on to another house, occupied by his father and mother, and after beating the former they pulled him out. That Boodai, his uncle, then came, when they beat him and he (Boodai,) fled. The villagers then all came, on which the assailants went away. He recognised all the prisoners, and No. 2 struck his father on the head.

"He likewise deposed that No. 2 wanted to marry his sister, but because his father and sister would not listen to his proposals, this attack had been made on his father, at the instigation of No. 2.

"The prisoners all pleaded 'not guilty.'

"The deceased's wife, witness No. 1, deposed to the prisoners Nos. 2 and 5 coming into the house, where she was sleeping with her husband, and to their beating him, when she fled to his (deceased's) brother's house, and told him to go and see what was the matter. The villagers also came, and when the assailants left the house, she went and found her husband lying in the compound, who told her Nos. 2 and 5 had struck him on the head with sticks, and on the evening of that day he died.

"This witness recognised all the prisoners Nos. 3, 4 and 6, she saw at the door. She also spoke to the proposal of marriage

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made by No. 2 for her daughter; but her daughter and husband would not listen to his proposal. The witness added that her daughter had since been married to Kinno Mundul's son, Fuqeer Mahomed, in Assin last.

"Witness No. 2, a very sharp and intelligent lad, aged eleven, and who was sleeping in the house with the prosecutor, also deposed to his father being beat and thrown down in the compound, when the assailants went away. He recognised all the five prisoners, whom he knew before. The witness then named them, described where they lived, and the distance their houses were from his father's.

"Witness No. 7 deposed to the deceased's wife coming to his house, and saying his brother was being murdered; and on his going to the house, all the prisoners began to beat him, when he fled. That the deceased and his son, Dhunye, were both lying in the compound,—did not speak to his brother. This witness also assigns, as a motive for the attack, the refusal on the part of his niece to marry the prisoner No. 2.

"The next witness, No. 8, came to the house on hearing the noise made by the deceased's wife, and recognised, *by their voices*, Nos. 2, 4 and 5, when going away from it. He also heard the deceased say he had been beat by the prisoners.

"Witness No. 9, another neighbour, and who went to the deceased's house, from their voices recognised Nos. 2, 4, 5 and 6. He also heard the deceased complain that the prisoners had beat him.

"Witness No. 10, likewise a neighbour, and who went to the deceased's house, from their voices recognised Nos. 2, 3, 4 and 5. He also heard the deceased say that the prisoners had beat him. This witness is a *ryot* of the prisoner No. 2.

"The native doctor of the hospital, (who in the absence, on leave, of the surgeon, examined the corpse when sent in,) deposed that the deceased's skull, over the right temple, was fractured, and the fracture was the cause of his death, in his opinion. There were no appearances of disease on opening the body.

"The prisoners all set up *alibis*, or that they were sleeping in their own houses. No. 5 pleaded he was at the house of one Mohun Shah, at Rumrama, and brought forward several witnesses who supported the *alibis*. No. 6 pleaded being sick and at home, and only one witness confirmed his statement.

"I agree with the law officer that the witnesses for the defence are not deserving of credit, and would, on the *futwa*, convict all the prisoners of being accessaries to the murder of the deceased, and suggest that No. 2, who, there can be no doubt, was the instigator, and himself assaulted the deceased (and other members of the family), be sentenced to transportation for life, and the rest to fourteen (14) years' imprisonment with labor and irons,

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"I have annexed to the proceedings a *nuthee* connected with a complaint, lodged by the prisoner No. 2, at the thanna, of Bina, (the deceased's daughter) being confined, and who, in his petition, he called his concubine; but the complaint was thrown out by the magistrate, the woman having attended and deposed that she was not in duress, and had never been confined, and that she had no *liaison* with Usman.

"I have also appended to the sessions proceedings a petition given to me by the prisoners *after* the conclusion of the trial when visiting the jail, and who, as their case is now in the hands of the court, will be sure to meet with strict and impartial justice."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I concur with the sessions judge that the case is one of murder. If death ensue in the prosecution of an illegal act, it is murder. The prisoners by their conduct showed an utter disregard of consequences, and the whole transaction was marked with the grossest violence. They entered the house, at night, (when the inmates were asleep) in a tumultuous manner, for the purpose of revenging themselves on the deceased and his family, for refusing to give their daughter in marriage to the prisoner Usman. They were armed only with sticks; and intending, it may be presumed, to do only some bodily harm to the members of the family, they committed murder. Still the offence is not of that deliberate and malicious character, which calls for a capital sentence Considering it to be fully established that the prisoners were present at, and aiding and abetting in, maltreating the deceased, in consequence of which he died, I convict them of being accomplices in the murder of Buktar Paramanick, and sentence Usman Talookdar, who was the instigator of the attack, and who himself assaulted the deceased, to imprisonment for life in transportation, and the others to fourteen (14) years' imprisonment, with labor and in irons. The sessions judge's conviction of the prisoners as accessaries is incorrect. They who are present aiding and abetting in the commission of a felony are accomplices or principals: they cannot be, legally speaking, accessaries, as laid down in Circular Order, No. 8, of Vol. IV."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

RAMNARAIN PATTUK

versus

NARAIN BAGDEE.

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Case of NARAIN BAGDEE.

An appeal against a sentence for dacoity, on futile grounds, rejected.

CRIME CHARGED.—Dacoity at the house of the prosecutor, Ramnarain Pattuk, in which cash and property to the amount of Company's rupees 579-13-6 was plundered.

CRIME ESTABLISHED.—Dacoity in the house of the prosecutor, in which property to the amount of Rupees 579-13-6 was plundered.

Committing Officer, Mr. A. Hope, assistant magistrate, with powers of joint magistrate at Santipore.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 5th December 1851.

Remarks by the sessions judge.—"There were two other persons committed in this trial, who were acquitted for want of proof. The convicted prisoner was caught by the chowkeedar of the village, assisted by some of the inhabitants, while he was in the act of carrying off a portion of the plundered property, which was produced in court. At the thanna and before the assistant magistrate stationed at Santipore, this prisoner confessed the part he took in the dacoity, and the confession was proved by the subscribing witnesses to have been quite voluntary."

Sentence passed by the lower court.—Seven (7) years' imprisonment, and two (2) years' more in lieu of corporal punishment, in all nine (9) years, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The only grounds for appeal urged by the prisoner are,—that he never was a thief, nor was his father a thief. He has been convicted on the fullest conceivable proof of the dacoity, and the sentence is therefore confirmed."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

DINONATH GANGOOLEY

versus

KANGALEE DHAWAH (No. 1), GOPAL BAGDEE (No. 2), JEETOO DHAWAH (No. 3) AND BYKUNT DHAWAH (No. 4).

1852.

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Case of KANGALEE DHAWAH and others.

Confessions taken in a case of dacoity by distinct and separate officers concurring, afford strong corroboration of the truth of otherwise doubtful evidence.

CRIME CHARGED.—Dacoity at the house of the prosecutor, Dinonath Gangooley, in which property to the amount of rupees 19-13 was plundered.

CRIME ESTABLISHED.—Dacoity in the house of the prosecutor, in which property to the amount of rupees 19-13 was plundered.

Committing Officer, Mr. A. Hope, assistant magistrate, with powers of joint magistrate at Santipore, zillah Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 10th December 1851.

Remarks by the sessions judge.—"The crime charged is proved by the statement of the prosecutor and the evidence of the witnesses, who not only recognised the prisoners at the time they committed the dacoity, but resisted them, and Nos. 3 and 4 were then and there wounded, which led to their being apprehended.

"Prisoner No. 3 confessed to the darogah and before the assistant stationed at Santipore. No. 4 confessed only before the latter officer, and those confessions have been satisfactorily authenticated by the subscribing witnesses. All the prisoners are men of bad character. They called some witnesses to prove an *alibi* but failed."

Sentence passed by the lower court.—Seven (7) years' imprisonment, and two (2) years more in lieu of corporal punishment, in all nine (9) years each, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The darogah, on hearing that some of the culprits were wounded by the prosecutor with a *dáo*, collected all the *budmashes* in the neighbouring villages. Out of these the prosecutor identified Kangalee and Gopal. Four persons, who were standing near his house at the time of the dacoity, subsequently stated and gave evidence at the trial that they recognised these two men as they were leaving the prosecutor's house by the light of a *mussal*. It is not usual for dacoits to leave the house of attack without putting out their *mussals*, and it is a singular coincidence that all the four men should each recognise the same two individuals. Were it not, therefore, that their evidence is

corroborated by the confessions of the other two prisoners, Jeetoo and Bykunt, I could not have confirmed the sentence on them. However, it so happens that the confessions were obtained in such a manner that although the confession of one man is not actual legal proof against another, they tend materially to corroborate the otherwise doubtful proof adduced. Jeetoo was seized by, and made his first confession to, the darogah. Bykunt was apprehended by a chowkeedar and taken direct to the joint magistrate at Santipore, where he recorded a full confession. These two confessions, taken in different places and by different officers, implicate the same persons, and among them are the prisoners Gopal and Kangalee. They have made no valid defence. The proof against the other two prisoners is conclusive. The appeal is therefore rejected."

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Case of KANGALEE DHAWAH and others.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

MAHOMED HOSSEIN HUKAK

versus

GHOLAM ALEE.

1852.

February 20.

Case of GHOLAM ALEE.

The prisoner was convicted on his confession before the deputy magistrate, and on production of stolen property.

The court remarked upon certain irregularities upon the deputy magistrate's proceedings.

CRIME CHARGED.—1st count, theft of property exceeding rupees 300 in value, from the prosecutor's house; 2nd count, accomplice to the crime aforesaid; 3rd count, privity to ditto; 4th count, receiving and possessing portions of the stolen property aforesaid, knowing it to have been such.

CRIME ESTABLISHED.—Accomplice in theft of property exceeding rupees 300 in value.

Committing Officer, Mr. W. H. Elliott, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 10th December 1851.

Remarks by the additional sessions judge.—"The prisoner, Gholam Alee (No. 1), and his master, Mahomed Salloy, and the prosecutor, who are followers of one of the ex-ameers of Scinde, living at Dum-Dum, were asleep in the same room, on the night of the 20th of April, and the next morning, the prosecutor found that his key had been taken from under his pillow and the contents of his box, valued about rupees 400, carried of. Gholam Alee was also gone. Information of the theft was given to the police, but the prisoner could not be apprehended until the 25th of April, when he was forwarded to the magistrate by the superintendent of the ex-ameers of Scinde, and on the 26th of April, he made a deposition before the deputy magistrate, and acknowledged that he was an accomplice in the transaction. He was

1852. February 20. Case of GHOLAM ALEE.

then sent back to the district police, and he produced a watch, which was part of the stolen property, from another man's house. He intimated before the deputy magistrate, that the property might be in the house of one Mundraz. That man is the husband of Bilasee, (prisoner No. 2), who has been acquitted, and who showed where some of the property was hid near her house; the recovery of the property through the statement of the prisoner strengthens the evidence against him."

Sentence passed by the lower court.—To be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow).—"The prisoner confessed before the deputy magistrate, whose proceedings are, however,* as the magistrate has justly remarked, in his *roobukaree* of the 31st May, very irregular. The confession of the prisoner was not at first duly certified, and the prosecutor was not called upon to file a list of the property stolen, stated by him, in the deputy magistrate's court, to exceed rupees 300 or 350. The prisoner was prosecutor's servant, and decamped on the night of the theft with his keys. Some clothes were found, and a silver watch, sworn to by the witnesses, was produced by the prisoner from the house of one Roushun in the Dum-Dum Cantonments. I see no reason to interfere with the sessions judge's order on the prisoner's appeal."

PRESENT:

SIR ROBERT BARLOW, BART., *Judge*.

GOVERNMENT

versus

BUNGSEE BEARER.

1852. February 20. Case of BUNGSEE BEARER. Conviction and sentence passed on the prisoner, on a charge of wounding, by the sessions judge, upheld in appeal.

CRIME CHARGED.—Wounding, with intent to murder his wife, Foolessuree Koorahuee.

CRIME ESTABLISHED.—Wounding his wife.

Committing Officer, Mr. W. H. Elliott, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 12th December 1851.

Remarks by the additional sessions judge.—"The prisoner and his wife lived together and appear to have had disputes, he smoked *ganja* and she abused him. On the morning of the 3rd of June, her mother was informed by the prisoner's child that he had beaten his wife. She accordingly went, and says she saw him throw down a piece of wood, which he had used to beat his wife with, and run off. The wood weighs rupees 63, and is one foot long, and is right-angled, so that its edge might

inflict a lacerating cut, but not unless it were used with force, so as to run the danger of breaking her skull. The wife says that he used the wood to beat her with, and before me alone she said that he cut her ear with a knife. Two neighbours went and saw the prisoner run off, and his wife was senseless. Information was immediately given to the police, the thanna being three *coss* distant; and the prisoner appears to have been apprehended before the arrival of the police. The prisoner deposed before the police and before the magistrate, that he beat his wife with a split bamboo, which is a more likely instrument for him to have used than a log of wood, for there were several slight wounds on the head and hand, such as might have been inflicted with such an instrument. The wife was sent to the hospital, but the wounds were never considered to be dangerous. Considering it far more probable that a light split bamboo was used than the club which was produced in court, I acquit the prisoner of the intention to murder, but convict him of the wounding, which was unmercifully inflicted, for there were several deep scars of wounds, which she will never lose, on her head."

1852. February 20. Case of BUNOSEE BEARER.

Sentence passed by the lower court.—To be imprisoned with labor for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Sir Robert Barlow, Bart.)—" I concur in the sentence passed on the prisoner. The wounds he inflicted on his wife, though not dangerous, were severe, and were the result of repeated blows."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

JAFFRA FUQEER

versus

MONSHUR NUSHO.

1852. February 21. Case of MONSHUR NUSHO.

The prisoner acquitted, in concurrence with the opinion of the sessions judge, the evidence against him not being satisfactory.

CRIME CHARGED.—Having possession of property obtained by burglary and theft attended with violence, knowing it to be such.

Committing Officer, Mr. E. S. Pearson, magistrate of Dinagepore.

Tried before Mr. James Grant, sessions judge of Dinagepore, on the 9th January 1852.

Remarks by the sessions judge.—" The prosecutor is a fuqeer. The thieves entered his house, having broken the bamboo by which the door was fastened, and forcibly took two necklaces and one armlet from the persons of his wife and boy, with which and a *patarah* containing clothes, they decamped on

1852. February 21. Case of MONSHUR NUSHO.

the neighbours approaching. The prisoner Kootub (No. 1), who lived hard by, was apprehended, it having been discovered that he had been absent on the night of the burglary, and confessed to having accompanied, on compulsion, six other men named, who entered the prosecutor's house, while he remained outside, and ran away in the other direction when the neighbours came. Some silver ornaments were found concealed in the house of 'Hamoolla,' one of the accomplices named, including a necklace which was claimed by the prosecutor, until it was found not to tally in weight with the one stolen. 'Hamoolla' said the ornaments had been sold to him by 'Fureemoolla,' another of the said accomplices, who confessed to the burglary and sale of the necklace and other ornaments to 'Hamoolla,' adding that the prisoner No. 2, Monshur, got the other necklace and armlet as his share of the booty. No questions were put to either as to where the necklace, &c., produced by Hamoolla had been obtained by Fureemoolla, but on the confession of the latter, Monshur (No. 2), and his friend 'Madaree' were apprehended. 'Monshur (No. 2's) house was searched and he was then taken to several places, (regarding which the evidence is very contradictory), and ultimately to the prosecutor's, where what purports to be his confession was written. In it only Kootab (No. 1), and three of the accomplices named by him, are mentioned, but eight other names are given, principally neighbours or friends of Monshur's (No. 2), making the party thirteen in all, notwithstanding the omission of three men named by Kootab (No. 1). In it he is made to say that 'Hamoolla' got one necklace, and that he had got the other necklace and one armlet, which he sold to 'Chyne Singh'. After this Fureemoolla and Monshur (No. 2) were taken to 'Chyne Singh,' who produced the necklace and armlet, stating that they had been pawned by Monshur (No. 2), for an advance of rupees 13, they weighing sixteen *tolas*. The substance of Monshur (No. 2's) defence is that he, his wife and his friend 'Madaree,' while on their way in a hackery to Dinagepore, came up with 'Fureemoolla' and 'Mujeeboolla,' near 'Chyne Singh's' house; that while they were smoking he observed a necklace and armlet with Fureemoolla, who said that he was going to sell them to 'Chyne Singh;' that four days after, while returning from Dinagepore, he, his wife and 'Madaree' were seized by a thanna burkundauz, who let his wife go on receiving rupees 10, and took him and 'Madaree' to the darogah; that his house was searched but nothing found, after which he was taken to the prosecutor's house and tortured, when he mentioned the sale of the necklace and armlet by 'Fureemoolla' to 'Chyne Singh;' that 'Chyne Singh' at first denied having the ornaments, afterwards produced them, saying he got them from 'Fureemoolla;' that the darogah then had some conversa-

tion with 'Chyne Singh' and that he, the prisoner, subsequently heard that he was accused of having pawned them; that 'Fureemoolla' and 'Chyne Singh' were at enmity with him, he having had a quarrel with the former (a tailor) about cabbaging cloth and with the latter about the abduction of a girl.

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"The *futwa* of the law officer convicts Monshur (No. 2), in which I do not concur, as I consider his defence by no means improbable and in no way shaken by the evidence for the prosecution, which is very unsatisfactory, the prosecutor and witnesses falling back upon the darogah as the person who knew all about it, when asked to explain discrepancies or circumstances which they could not well be ignorant of had there been no underhand proceedings in the case. Monshur (No. 2) is a young man of respectable appearance and one of five brothers who live together, and are said to have considerable property; that a man in his circumstances should join twelve others to plunder a beggar, and run away with only one of his wife's bracelets, on the approach of the neighbours in a small village, appears to me most improbable, while, on the other hand, the occasional seizure of a man of substance and his neighbours in a case of this kind is not an uncommon police manœuvre."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow.)—"I concur with the sessions judge in the acquittal of Monshur Nusho. The prosecutor did not charge him nor was he apprehended till the 9th of December, a week after the offence was committed, on the confession of Fureemoolla Durzee, who was himself released by the magistrate. The prisoner is said to have confessed in the Mofussil; he denied before the magistrate and sessions judge. Chyne Singh, to whom it is alleged the prisoner sold some property, Nos. 3 and 4, at first denied he had taken any from the prisoner, though he afterwards produced it. The evidence to the prisoner's character is favorable to him, and the sessions judge's opinion is also in his favor."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

BUNGO BEWAH, ON THE PART OF MR. GILMORE,

versus

SADEK PARAMANICK (No. 1), BARAMDEE PARAMANICK (No. 2), MUNGUL PARAMANICK (No. 3), SITUL PARAMANICK (No. 4), JHURROO PARAMANICK (No. 5) AND KULLUM PARAMANICK (No. 11).

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Case of SADEK PARAMANICK and othes.

Prisoners found guilty of culpable homicide, by beating the deceased in the water and causing him to be drowned, sentenced to five and three years' imprisonment.

CRIME CHARGED.—1st count, affray with the homicide of Pamosa Sheikh; 2nd count, affray in which Allee Biswas and others were assaulted and slightly wounded, and Pamosa Sheikh was beaten and drowned in the old Ganges River, his body having not been recovered.

Committing Officer, Mr. J. J. Ward, joint magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 29th of December 1851.

Remarks by the sessions judge.—"The *futwa* is one of acquittal as regards all the prisoners, and my dissenting therefrom is the reason for this reference.

"In such cases there are always two accounts or statements, and that for the prosecution may be briefly stated, and in my opinion is fully borne out by the evidence taken in this court, which, I may add, is confirmatory of what was given before the police and joint magistrate.

"The deceased with several other *coolies*, and servants of the Munsitpore indigo factory, had gone early in the morning to cut down the jungle grass on a *chur* called Istha, where the proprietor of the factory, Mr. David Gilmore, had a *jote*. On reaching the place they found the prisoners and others ploughing up land on the *jote*, and protested at their doing so, as it belonged to their employer, who required it for indigo. The prisoners, however, instead of desisting, immediately set upon the factory people and *coolies*, who fled in all directions, and Pamosa, the deceased, in attempting to cross a channel of the river, separating the *chur* from the main-land, was beat while in the water with bamboo staves, when he sunk and was drowned and his body has never been found. The assault made on the factory people was by direction of the prisoners Nos. 1 and 2, and Dokee, witness No. 9, was the party most severely beat, who went with Shahee and complained at the *ghattee* or police station, which is about two miles off from the spot.

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"This statement is fully supported by the witnesses for the prosecution, six of whom actually saw Pamosa beat, and then sink in the water.

"The prisoners Nos. 1 and 2 were the most active in the assault on Pamosa (according to the witnesses,) and were the first to resent the interference on the part of the factory people with their ploughing the land on the *chur*, and it will be seen, by the deposition of witness No. 8, a factory servant, who went with the coolies to superintend the work, that he had a narrow escape himself of being drowned in attempting to cross the same channel of the river where Pamosa sunk.

"The statement of the prisoners is, that the factory people came to the village, plundered some of the houses, and set fire to a house or houses belonging to one Mundeer Khan, and that they secured a *takadgeer* by name Iktear, whom they delivered over to the police. The *ghattee* mohurir, in his report, states that the chowkeedar could give no account of the burning of the houses, and that Mundeer Khan, the owner, suspected no one, and the inference is that the whole was a made up story to create a diversion in favor of the *ryots*, for if they had done nothing, why should the factory people go and attack the village? I entirely agree with the police, and the joint magistrate, that the counter charge was a false one, set up by the *ryots* to divert attention from the real outrage committed by them, and for which they had rendered themselves amenable to the law.

"From the fact of the body of Pamosa not being found, the proof is not so complete as it might have been, and, on this ground, the law officer in his *futwa* seems to doubt if he, (Pamosa,) ever went to the *chur*; but not only the deceased's mother, but all the witnesses for the prosecution, but one, deposed to his accompanying them, and his mother most distinctly and emphatically deposed that she had never seen her son since he was taken away, and that Wasseer Biswas immediately after the affray informed her, that he had been drowned in the river.

"With regard to the *chur*, called Istha, a case under Act IV. seems to have been instituted before the joint magistrate, but it was not disposed of before the present commitment was made, or trial concluded. From the copy of a proceeding by the deputy collector attached to the Revenue Survey, it would appear the *chur* was adjudged by him to the proprietor of the prisoners' village, Dost Mahomed Chowdree. Mr. Gilmore rests his claim on an order psssed under Regulation II. of 1819, before the revenue deputy collector, who resumed the *chur* on account Government, it being *new-formed land*. Be this as it may, e right to the *chur* will not affect this case, or render the

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prisoners less guilty for the wanton and uncalled for assault made on a man running away, and who was *actually* in the water when beat by them, and it may be presumed was stunned, and thus lost his life.

"I therefore beg to recommend that the *futwa*, as opposed to the evidence and facts, as fully proven in the sessions court, be set aside, and the prisoners Nos. 1 and 2 be sentenced to five (5) years' imprisonment with labor and irons, for the assault on Dotee Sheikh and Pamosa, on the latter when in the water, where he sunk and was drowned, and the others, for aiding and abetting in such assault, to three (3) years' imprisonment with labor commutable on the payment of a fine of rupees 100 each.

"The *foujdaree omlah*, I find, took back the record in the Act IV. case, and also in the one relating to the burning of Mundeer Khan's house, which has occasioned this delay in referring the case for the orders of the court. The prisoners Nos. 1 and 2 are on bail, the others, from inability to furnish bail, are in jail.

"It rests with the court to decide whether the aspersions, in the *futwa*, on the police and factory people were called for or warranted. To me they appear not only gratuitous, but totally beside the case. The law officer should have confined his verdict to the guilt or innocence of the prisoners. Instead of which he turns round upon the witnesses for the prosecution and imputes to them crimes which the records of the cases clearly show they never committed, or even contemplated.

P. S.—"The two cases alluded to in para. 11th, have not yet been received from the joint magistrate of Pubna. They will be forwarded directly they are."

The court,—(Present: Mr. Mytton.)—After perusing the above papers, recorded the following Resolution No. 166, dated 7th February 1852.

"The court, having perused the papers above recorded, connected with the case of Sadek Paramanick and others, direct that the sessions judge will state his opinion more distinctly than has been done in the 10th para. of his letter, No. 1, of the 12th ultimo, whether he finds the prisoners guilty of causing the death of Pamosa Sheikh, and, if so, what class of homicide he considers their offence to amount to; the charge, indeed, on which they were committed, is defective in not being specific in this respect.

"They also direct that the sessions judge will point out what expressions in the *futwa* he considers objectionable."

The sessions judge in his letter, No. 5, dated the 14th February, answered the above Resolution as follows:—

"I have the honor to acknowledge the receipt of the court's Resolution, No. 166, passed in the case of Sadek Paramanick and others, charged with homicide, &c.

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February 12.

Case of SADEK PARAMANICK and others.

"I beg in reply to the call made by the judge (R. H. Mytton, Esq.,) who revised the proceedings, to state that I have not, that I am aware, any where stated that the prisoners were guilty of 'homicide.' I considered only an assault proved, and that aggravated, as the person assaulted was so while in the water, where he sank and was drowned, and the sentence proposed by me for the two principals was with reference to that passed on the trial of the prisoner Doulut* by two judges of the court in a very similar case, only the body was in that case discovered, from the deceased falling into a well and not into a river.

"I may be allowed to add that in the case of the Custea Darogah, who was wounded with a *surkee*, and 'afterwards 'knocked into the water, from which he was taken out dead, 'and his body carried off,' I convicted the principal of an aggravated assault, and the sentence proposed was one of imprisonment for life, in transportation, and confirmed by the court, but who convicted him of 'murder.'

"On the same principle if the court consider the prisoner's offence to amount to 'culpable homicide,' they can sentence him for that offence, as 'homicide,' without stating what kind of 'homicide' is a part of the first count.

"What I consider objectionable in the *futwa* is all that refers to the police, and the factory people, between the words آدمیان ظاهرمیکنند down to اختیاري صاحب موصوف اند as it is the province, I imagine, of the judge, and not of the law officer or jury, to comment on the behaviour of the police and conduct of a party complaining of an outrage committed.

"The court will perceive that the darogah of Pubna, (one of the first grade) confirms the *ghattee* mohurir's report, and as for Mr. David Gilmore, he has only recently purchased the factory, and from what I have heard of him, was not a likely person to get up a case of '*goom*' for the sake of establishing a claim to a few beegahs of *chur* land."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The facts, of which the sessions judge declared the prisoners guilty in the 10th para. of his letter of reference, appeared to the court to imply that that officer considered that the prisoners had caused the death of Pamosa; but on reference to him as to the class of homicide to which their offence amounted, he states that he only convicted the prisoners of an assault. Pamosa's body has not been found; but notwithstanding the lapse of four and a half months, no traces of his existence have been discovered. He was driven towards the river, knocked into it, and beaten while in the water, when he sunk to rise no more, by some of the prisoners, at the instigation of

* II. Nizamut Adawlut Reports, page 396.

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Nos. 1 and 2. The court must consider them guilty of causing his death. They have not been committed on a charge of wilful murder.

"I convict the prisoners Nos. 1 and 2 as principals, and the others as aiders and abettors in the culpable homicide of the deceased, and sentence them as proposed by the sessions judge, the two former to five (5) years' imprisonment with labor and irons, and the others to imprisonment for three (3) years with rupees (100) one hundred fine, commutable, on non-payment within fourteen days, to labor.

"The expressions in the *futwa*, observed upon by the sessions court, do not appear to call for censure. The law officer has only stated his reasons for disbelieving the evidence, *viz.*, that the inquiry was partial and the witnesses interested. In doing this he has not exceeded his privilege of commenting on evidence before him."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

FYZOOLLAH SHEIKH

versus

SHADHOO GOWALLAH (No. 7), SHEIKH AHSANOOLLAH (No. 8, APPELLANT), GHOLAM GHOSE SHEIKH (No. 9, APPELLANT), RAJIB HAREE DAGEE (No 10), DEBEE BAGDEE, CHOWKEEDAR (No. 11), SUNNIASEE BAGDEE, CHOWKEEDAR (No. 13), KAMOO SHEIKH (No. 15, APPELLANT), ABDOO SHEIKH (No. 16, APPELLANT), AMANUT SHEIKH (No. 18), MANIK BAGDEE (No. 21), PURAN HAREE (No. 22), PANCHOO BAGDEE DAGEE (No. 23), PURESH HAREE, CHOWKEEDAR (No. 24) AND KANGAL RAE DAGEE (No. 25).

1852.

February 23.

Case of Shadoo Gowallah and others.

The conviction of the prisoner No. 9, which rested only on an unsupported Mofussil confession, was held to be not good, and the prisoner was acquitted. The court confirmed the convictions of the other prisoners but remarked on the inadequacy of the punishment awarded to them.

CRIME CHARGED.—1st count, dacoity attended with wounding committed in the prosecutor's house, from whence property valued at rupees 174-12 was plundered; 2nd count, accomplices in the above-mentioned dacoity; 3rd count, knowingly receiving plundered property acquired by the above-mentioned dacoity; 4th count, accessary before and after the fact of the above-mentioned dacoity; 5th count, privity to the above-mentioned dacoity.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer, Mr. F. A. E. Dalrymple, magistrate of Beerbhoom.

1852. February 23. Case of SHADOO GOWALLAH and others.

Tried before Mr. H. F. James, sessions judge of Beerbhoom, on the 15th December 1851.

Remarks by the sessions judge.—"The house of the prosecutor was attacked by dacoits, on the 13th Kartick last, (October 29th 1851,) and property to the amount of some rupees 174-12 was plundered and carried off.

"The prosecutor was severely wounded by one of the dacoits on the head at the time of the dacoity. After the dacoits had broken open the boxes and chests, and when they were going off, the prosecutor's son and others seized one of the dacoits, Shadhoo Gowallah, prisoner No. 7, and kept him prisoner. He immediately told his captors, that the dacoits had been induced to commit the dacoity at the instigation of two of the residents of the village in which it occurred, and in the morning when all the villagers were collected, he pointed out Ahsanoollah, prisoner No. 8, and Gholam Ghose, prisoner No. 9, as the informants of the probable large amount of property to be found in the house of the prosecutor, and as the instigators of the plot, and these men, when questioned, admitted that they were concerned, and named Rajib Haree, prisoner No. 10, as the person who collected the dacoits. He allowed that he had assisted in the dacoity and named prisoners Nos. 11 and 13 as having accompanied the party, and prisoners Nos. 15, 18, 19, 22, 24 and 25 were apprehended from the confession of prisoner No. 13; all these men also confessed before the police, and prisoner No. 16 was named as one of the dacoits. All the prisoners confessed before the darogah, and implicated more or less each other. They all admitted that they assisted in the dacoity, and prisoners Nos. 11, 13, 15, 16, 21, 22, 23, 24 and 25, after their apprehension, pointed out different portions of the plundered property, which had been made over to them as part of the spoil, and which they had concealed. The different confessions of the prisoners, before the darogah in the Mofussil, tally in all the main points as well as the statements made before the magistrate, by prisoners Nos. 7, 8, 10, 15, 18 and 23, and the finding of the portions of the plundered property in the possession of some of them, as indicated in their confessions, greatly strengthens the general faithfulness of their statements. The Mofussil and foujdaree confessions were all properly attested and sworn to in my court, and the searching of the prisoner's houses and premises by the police, and the finding therein the stolen property were regularly conducted, and all the facts connected with these transactions were sworn to clearly in my court. There were witnesses moreover to prove that prisoners from Nos. 13 to 25 were absent from their houses on the night of the dacoity. Prisoner No. 22, Puran Haree, is an old offender, and was convicted in June 1836, of highway-robbery, and imprisoned for three (3) years with

1852. February 23. Case of SHADOO GOWALLAH and others.

labor in irons, and prisoner No. 25, Kangal Rae, was imprisoned in April 1841, for cattle theft, for one (1) year, Panchoo Bagdee, prisoner No. 23, suffered imprisonment for six (6) months, from May 1842, for theft of grain.

"The defence of the prisoners is weak and unsupported by evidence, and can in no way affect the apparent truth and faithfulness of the evidence for the prosecution.

"Prisoner No. 7, who was seized and made prisoner at the time of the dacoity, says that he had come to the village of Arna, where the dacoity occurred, for the purpose of purchasing cows, and that he was sleeping at the door of the prosecutor's house, and was seized and imprisoned as one of the dacoits, but this allegation is entirely uncorroborated, though witnesses were called to prove it. Prisoners Nos. 8 and 9 called witnesses to prove an *alibi*, in which they failed. Prisoners Nos. 10, 11 and 13 say that they were at home; prisoner No. 15 admits he was absent from his house during the night of the dacoity. Prisoner No. 16, Abdoo Sheikh, says, that the cloths found in his house, are his property, and named witnesses to prove it, who declare they know nothing of the property belonging to him. Prisoner No. 18 denies his confessions. Manick Bagdee, prisoner No. 21, pleads an *alibi*, but fails to prove it. Prisoners Nos. 22, 23, 24 and 25 call witnesses to character, and to speak to their being at home on the night of the dacoity, but witnesses declare that they are unable to speak to the latter fact.

"None of the witnesses for the defence corroborate in any material point, the different pleas set forth by the prisoners.

"I convict Debee Bagdee, prisoner No. 11, Sunniasee Bagdee, prisoner No. 13, Puresh Haree, prisoner No. 24, all of whom are chowkeedars, of dacoity with wounding, and sentence them to imprisonment with labor in irons for ten (10) years, and Puran Haree, prisoner No. 22, who was formerly convicted of highway-robbery, I convict of the crime of dacoity with wounding, and sentence him also to ten (10) years, and I convict prisoners Nos. 7, 8, 9, 10, 15, 16, 18, 21, 23 and 25, of dacoity with wounding, and sentence them all to be imprisoned with labor in irons for eight (8) years in the zillah jail."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners Ahsanoollah, No. 8, Gholam Ghose, No. 9, Kamoo, No. 15 and Abdoo, No. 16, have appealed, but I have reviewed the proceedings as against all, and am of opinion that a good case is made out against the prisoners Nos. 7, 8, 10, 11, 13, 15, 16, 18, 21, 22, 23, 24 and 25. The prisoner No. 7 was apprehended on the spot; he confessed before the darogah and the magistrate, and on his information, the other prisoners were severally arrested. The proof against Gholam Ghose, prisoner No. 9, rests on a Mofussil confession to being an accessary before

the fact; it is not corroborated in any way, and is, therefore, insufficient to justify conviction. He is accordingly acquitted. The prosecutor was severely wounded, and I think the sessions judge should have visited the offence with a more severe sentence than he has passed."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

BYKUNTO, CHOWKEEDAR.

1852. February 25.

Case of BYKUNTO, CHOWKEEDAR

The Nizamut Adawlut, in concurrence with the *futwa* of the law officer, and dissenting from the opinion of the sessions judge, acquit the prisoner on a charge of perjury. The court held that the identity of the prisoner as the person who gave the deposition of the 3rd of April 1850, was not established.

CRIME CHARGED.—1st count, perjury, in having, on the 4th September 1851, under a solemn declaration taken instead of an oath before the moonsiff of Salimabad at Mamaree, on being questioned whether in a former claim case he had deposed that Ramjibun Gusen had bought, and held possession of certain land from Radhanath Roy, deposed that 'I never did depose to 'Ramjibun Gusen's having purchased that land from Radha-'nath Roy, or having had possession of it', such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case; 2nd count, perjury, in having, on the 3rd April 1850, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the moonsiff of Selimabad at Mamaree, 'that I am ac-'quainted with the land which the decree-holder, Gobind Haree 'Ghose, has attached. It was the land of the debtor, Radhanath 'Roy, bought and held possession of by the claimant Ramjibun 'Gusen,' and in having, on the 4th September 1851, again intentionally and deliberately, under a solemn declaration taken instead of an oath before the said moonsiff of Salimabad at Mamaree, on being questioned whether he knew anything regarding the purchase of Ramjibun Gusen of the above-mentioned land from Radhanath Roy, deposed that 'I knew nothing about it, and 'never heard of such purchase,' such statements being contradictory of each other on a point material to the issue of the cases.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. E. Bentall, additional sessions judge of East Burdwan, on the 10th February 1852.

Remarks by the additional sessions judge,—"The deposition, which is said to have been made by the prisoner on the 3rd of April 1850, does not bear his name written by himself, but there is a *kubala* in the record, on which he had written his own name. This, however, was not put into court until the 25th of

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May 1850. The prisoner does not distinctly deny that he gave his evidence on the 3rd of April, but he denies that this is the deposition which he made. He says that he signed his deposition, and that it was not to this effect. Before the magistrate, who, however, had no business to take his defence, he allowed that he did give his evidence on two occasions. The vakeels on both sides, and the writer of the evidence, show that the deposition which was produced, was made by a witness on the day it is dated.

"With regard to the *kubala*, the prisoner allows that it bears his signature, but he says that he signed the paper without knowing what it was.

"The evidence of the prisoner, dated 4th September 1851, is proved by witnesses, and is not denied by the prisoner. As the prisoner allows that he signed the *kubala*, and did allow before the magistrate that he gave evidence in the case, which was pending on the 3rd April 1850, and the deposition, which is produced in court, was written before the vakeels of both parties by a man of the prisoner's name, and signed by the vakeels in that case, I cannot doubt that it was the deposition of the prisoner. If the evidence had been given in a criminal court, it would have been necessary to have read it over before the deponent before his signature was put on it, but it was taken with all the ceremony that law and custom require for civil suits, and on each occasion the deposition was material to the issue of the case in which it was taken, and the two are contradictory. I, therefore, find the prisoner guilty of the second charge, and would sentence him to three (3) years' imprisonment with labor in irons.

"I do not find the prisoner guilty of the first charge, as I do not think it was material to the issue of the case, which was then pending, to show that the prisoner had given his evidence in another case, unless that evidence were to be produced on the trial which was then pending."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The law officer acquits the prisoner on the ground that there is no proof that the deposition of the 3rd April 1850 was really made by the prisoner. The prisoner does not deny that he gave evidence on the 3rd April 1850, but pleads that the deposition before the court was not made by him, and refers to its not bearing his signature in proof of his plea. As it is admitted that the prisoner can read and write, and the deposition is not signed by him, and as the witnesses cannot identify him as the person who gave evidence on oath on the 3rd of April 1850, I agree with the law officer in finding the charge to be not proved, and acquit the prisoner."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

UZHUR ALEE, (No. 7).

1852. February 25.

Case of UZHUR ALEE.

The court held that there was no direct evidence to the prisoner having fraudulently altered the deposition and the presumptive evidence was insufficient to justify conviction. As regards the charge of uttering the document, the court was of opinion that the uttering had not been completed and acquitted the prisoner.

CRIME CHARGED.—1st count, forgery, in having feloniously and injuriously altered a deposition taken in a judicial proceeding before the judge, by subsequently inserting or causing to be inserted therein the words 'Sun' and 'Aghun 1255'; 2nd count, knowingly procuring the issue of the said counterfeit deposition, by means of an authenticated copy fraudulently obtained.

CRIME ESTABLISHED.—1st count, forgery; and, 2nd count, procuring the issue of such forged paper with the knowledge thereof.

Committing Officer, Mr. A. E. Russell, joint magistrate of Purneah.

Tried before Mr. D. Pringle, sessions judge of Purneah, on the 1st December 1851.

Remarks by the sessions judge.—"The forgery with which this moonsiff is charged, is supposed to have been committed after the issue of an order by me as judge for his prosecution, on a charge of extortion, before the magistrate such interpolation of the year and date, in the deposition of Nujeeboollah referred to, having the effect of clearing the moonsiff, who had then been absent on leave, while it would convict the witness so deposing of perjury. It will be seen from my *roobukaree*, on the civil side, dated the 24th July last, that I only decided on so prosecuting the moonsiff, when about to transmit the proceedings in the case to the commissioner of the division, who was accordingly summoned on the 25th idem, for communication of this order, but did not attend, pleading sickness, as is shown by the civil surgeon's report of that date, to have been a mere subterfuge. On Saturday, the 26th, I was engaged in a sessions trial until one o'clock, at which time the moonsiff appeared in court with two stamp papers, loudly calling for a copy of Nujeeboollah's deposition, who was directed to present an *arzee*, on which the order for this would be passed. On Monday, the 28th idem, my sherishtadar at an early hour, came to my residence, and requested to be informed whether in my notes of Nujeeboollah's deposition, the year and date were found entered, in witness's answer to the moonsiff's question. To which I at once replied in the negative, the omission having already attracted my attention. On this he observed that a gross fraud

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had been practised, the moonsiff having on the Saturday got a copy of Nujeeboollah's deposition, in which both were inserted, on which date he had been absent on leave. Having desired him to represent this, I proceeded to court at an early hour and first took the answer of Tuffazul Hossein, who had recorded the deposition in question, and likewise made the copy, then that of Rajnarain Mohafiz, by whom the latter had been authenticated and delivered, who with the moonsiff and certain of his *amlah*, were the same day made over on a charge of forgery to the magistrate, as set forth in my two proceedings of the 28th July and the 23rd August. The moonsiff and mohafiz being eventually committed for trial on the 20th November; Tuffazul Hossein being thus made a witness. I will here first examine the alleged interpolation, as found in a question put by the moonsiff to the witness Nujeeboollah; and the answer thereto being as follows :—*Question.*—You have mentioned giving me a hundred rupees, along with Mahomed Jan, you are therefore asked in what *year* and *place* you gave it? *Answer.*—I gave it in the house on the northern *betha* of the moonsiff's residence, which house having fallen down, another house has been erected *Aghun* 1258. The words underlined, are those supposed to be interpolated. Tuffazul Hossein, (whose evidence with that of the other witnesses will be found recorded *verbatim* in my English notes) here deposes to receipt of the order in the sherishtah for delivery of the copy, at which time the moonsiff was seated near the mohafiz, (the interval, from inspection of the room, was found to be eight or ten paces) with the *nuthee* of his own case open before him, which he was then examining, who now asked witness to make the copy, who at first refused, but the mohafiz saying he would do it quickly, he consented, and the moonsiff began to dictate as witness wrote. The moonsiff soon after going out, who then handed over the papers to Boondeelal (his own Fuseleh Naveez, also suspended,) who went on to dictate, witness continuing to write. When he came to the mention of *Sun, o Mokam*, witness said, it will be month; Boondeelal saying no, *Mokam*, clear; which witness now examined and said this mark not intended for *sun*, which he therefore at this time, left out; on coming to the answer, when *Aghun* 1255 read, witness asked Moolkee or Bengalee? and examining it said, this entered at the end of the line, and not in my style of writing, who then mentioned it to the mohafiz, who said you may have forgotten, who else would write it; witness after this going on with the copy, which he gave to mohafiz, who bid witness compare it, saying he would be answerable; who on this said ask the judge, he took notes of the evidence, mohafiz replying go to the sherishtadar; witness answering that it was for mohafiz to do this, who however did so. On the sherishtadar coming out of court, who told

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him not to give the copy, he replying that this rested with mohafiz, witness afterwards refusing to endorse delivery of copy, which Soukeelal did by mohafiz's order, the moonsiff making great outcry for it. The witness then goes on to state how he conferred with the sherishtadar next day on the subject, which led to the latter accompanying him to the judge, on the Monday morning; who having now again examined the original deposition, he declares positively that the words aforesaid are not in his handwriting, who adds that the moonsiff was in the habit of so sitting in the mohafizkhana, making copies for himself. This witness, it will be seen, was examined and cross-examined at great length, for which, as already said, I must refer to my English record of the evidence. Issurchund, mohurir, next examined, confirms that stated by the preceding witness, as to his objections, and to mohafiz getting the signature and seal to the copy, notwithstanding witness refusing to endorse delivery of this, as Tuffazul Hossein said his suspicions were not removed, the *nuthee*, he adds, had only come back the day previous to the mohafizkhana, having before remained with the judge. Mujeeboollah, prosecutor in the charges against the moonsiff, next deposes to getting copy of the said deposition on plain paper, which he thinks Feizbuksh wrote, as now filed, showing that the original at that time contained no such words. Nujeeboolah, the deponent, declares that the year and date were not asked by the moonsiff, and therefore not stated in his reply, the date on which he did give the rupees 100 to the moonsiff, being the 2nd Bhadoon 1256, Moolkee. Feizbuksh deposes to the copy made for Mujeeboollah now shown him, being a faithful transcript; Zuhoor dufturee, to taking out the *nuthee* of the moonsiff's case from the chest, and giving it to the mohafiz, on the Saturday, who then took it to his own sherishta followed by the moonsiff; witness going to the writer's room, who at the close of the day heard the moonsiff loudly calling for his copy, which he saw him take away; Soukeelal, to endorsing the delivery of the said copy, by order of the mohafiz, and entering it in the register; the moonsiff threatening to tell the judge, if the mohafiz withheld it. For the defence Mahomed Punah was first examined, who deposes that on coming from the foujdaree court on the Saturday evening, he found moonsiff waiting for a copy, he did not say of what paper, which witness then assisted him in getting, yet never heard him mention the paper; witness was moonsiff's bail before the magistrate. Enayet Hossein, in whose house moonsiff resided while the charges of bribery were under investigation, deposes to the latter saying, on his return from cutcherry, that he had been absent at the time mentioned by Moonshee Khuleel and Nujeeboollah in their statements. The moonsiff has given in a written defence, of which the principal

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points are these :—*first*, that as Nujeeboolah's deposition established nothing, there was no need to commit such forgery; *secondly*, Mujeeboollah could not be prosecutor in a charge of extortion, not being the party aggrieved, as ruled by the Agra Court in a case lately decided; *thirdly*, there was only Nujeeboollah and Mahomed Jan to prove it, the latter having at first denied his knowledge of it, who, on a subsequent date, in the moonsiff's absence, so deposed; *fourthly*, the magistrate has stated the delivery of the money to be established, yet dismisses the charge of the bribery; *fifthly*, the forgery is stated by the judge to have been committed on the 25th or 26th of July, but the moonsiff had, on the 21st June, or five weeks before, in his answer in Nujeeboollah's case, stated that he was then absent; *sixthly*, that Tuffazul Hossein is a careless mohurir, and in other places of the same record has so taken down the statements. The above objections have been stated in the order they were considered. I had two able assessors on this occasion—Mr. Dessa, the deputy collector, and Baburiah Jha, a highly respectable Tirhoot zemindar, on a visit at the station. Mr. Dessa would acquit the moonsiff, *first*, as the witness might have stated in his answer, what was not in the question; while the judge's notes were not proved conclusive, giving merely the leading heads; *secondly*, as Tuffazul Hossein was at first held to be equally implicated with the others by the judge, while the evidence of the witnesses in the bribery case is necessarily to be received with caution; *thirdly*, that though the forgery in the first count, is not proved, strong suspicion exists as to the moonsiff's guilt under the 2nd count, yet not sufficient to establish this. Baburiah Jha finds the moonsiff guilty under both counts, pronouncing that, from evidence of the witnesses, from inspection of copy of the deposition obtained by Mujeeboollah, from the unusual coupling of the year and place, in the question, without the month, and the no less anomalous addition of both to the answer, there is violent presumption as to the interpolation of these, by the moonsiff, being the party immediately benefitted, thus securing his release in the case of bribery then pending; and seeing that Tuffazul Hossein openly expressed his doubts as to the entry of these words, on which the moonsiff became only more importunate for the copy, his guilt under the second count is in like manner established. My opinion coincides with that of the last assessor. As respects that advanced by Mr. Dessa, on the other side, seeing the interpolation is found in both the question and answer, I do not perceive how it is so to be accounted for. And though undoubtedly Tuffazul Hossein was much to blame, I entirely concur with the magistrate, who in this case admitted his evidence. Both he and the mohafiz, I am of opinion, were the dupes of the moonsiff, who having

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thus got access to the papers and so effected his object, they dare not now refuse him copy of these. Mr. Dessa would reject the evidence of Nujeeboollah and Mujeeboollah, as parties interested, but it is seen that they were in no wise instrumental in getting up this charge, being only required now to affirm that to which they had already deposed. In answer to that urged by the moonsiff, I observe,—*first*, that although an indictment for bribery or extortion might not lie against him, in Nujeeboolah's case, yet the fact of his receiving such money was pronounced by the magistrate to be established, who having called for a *futwa* in that case, the offence was declared to merit dismissal. It is, however, I am of opinion, justly urged by the moonsiff, that Mujeeboollah could not be made prosecutor in the same; nor yet the Government, it may be supposed, if such law as that in contemplation be required to authorize it. Mahomed Jan, witness to its payment, did not at any time, I would observe, deny his knowledge of this; his deposition in that case was taken on the 26th and 27th February, as will be found recorded *verbatim* in my notes, and as to its being in absence of the moonsiff, my second *roobukaree* of the latter date refutes this. *Lastly*.—As to that alleged to have been stated of his absence, by the moonsiff, in his answer of the 21st June, this, it is seen, had reference entirely to an almirah, in which the money was said to have been placed. On all which grounds, I concur with my assessor Baburiah Jha, as already stated, in convicting the moonsiff under both counts; on whom sentence was passed as recorded."

Sentence passed by the lower court.—To be imprisoned for three (3) years with light labor and an iron ring.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—" I agree with the sessions judge that the original deposition of Nujeeboollah has been fraudulently interpolated, and most probably with a view to subserve the prisoner Uzhur Alee, but that it was done with this intent legal proof is wanting.

" The prisoner is first charged with 'feloniously and fraudulently altering a deposition taken in a judicial proceeding.' Direct evidence to the fact there is none, and that of a presumptive nature is wholly insufficient to support a conviction on the charge, it merely goes to prove that the prisoner applied for a certified copy of Nujeeboollah's deposition, that he was seen by the witness, Tuffazul Hossein, sitting with prisoner Rajnarain, the record-keeper, and examining the record, and that he dictated some part of the deposition to the said witness, as he took it down. But it appears he was not present when the witness in question transcribed the interpolated passage, and expressed his doubts to the prisoner Rajnarain, as to the original words being in his handwriting. Tuffazul Hossein, it is to be

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observed, was the person who took down in writing Nujeeboollah's statement.

"Then as to the second charge—'knowingly procuring the 'issue of the said counterfeit deposition by means of an authen-'ticated copy, fraudulently obtained.' The prisoner Uzhur Alee, received the authenticated copy, but it was taken from him by the order of the civil judge, before he attempted to make use of it. Had he presented the document to the magistrate, and sought to have derived benefit from it, the uttering would have been complete, and a strong presumption would have arisen that he uttered it, knowing it to be forged for a fraudulent purpose, but the mere taking of the authenticated copy from the prisoner Rajnarain, does not constitute an uttering. He doubtless took it for a fraudulent purpose, but as he did not give effect to it, the purpose, which is the essence of the crime, is not proved. The offence of uttering was only inchoate. I agree with the assessor Mr. Dessa, that the charges are not established against the prisoner, and acquitting him thereof, direct his immediate release.

"I observe that the sessions judge has acquitted the prisoner Rajnarain, though the evidence to the first charge was precisely the same against him as against Uzhur Alee. He considered him to be the dupe of the other prisoner. He was the record-keeper, and had in his keeping the record containing the deposition which was interpolated, and he certified and delivered to the prisoner, Uzhur Alee, a document purporting to be a true copy of the original, notwithstanding that the witness Tuffazul Hossein protested against its delivery. He may not have been cognizant of the forgery, but his certifying and delivering the document, (knowing that suspicion had been cast upon it,) on his own responsibility, without informing the sherishtadar or the judge, was such a flagrant violation of duty as to render him unfit, unless some sufficient explanation can be given on the point, for the office he holds. The civil judge is requested to explain what notice has been taken of his conduct."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

BHAGUTCHURN MAINTEE (No. 1) AND CHINTAMO-NEE SINGH (No. 2).

1852.

February 26.

Case of BHAGUTCHURN and another.

The sentences passed by the sessions judge, upon the prisoner No. 1, convicted of forgery, and upon prisoner No. 2, of knowingly uttering a forged document, affirmed in appeal by the Nizamut Adawlut.

CRIME CHARGED.—No. 1, in the 1st count, having forged the document marked M., which purports to be a *roobukaree* of the officiating collector of Balasore, dated 19th September 1850 A. D.; 2nd count, having issued, and uttered as genuine the forged document marked M., which purports to be a *roobukaree* of the officiating collector of Balasore, dated the 19th September 1850 A. D., knowing the same to be forged and fabricated; and No. 2, 1st count, being an accomplice of, and aiding and abetting prisoner No. 1, in the forgery of the document marked M., which purports to be a *roobukaree* of the officiating collector of Balasore, dated the 19th September 1850 A. D.; 2nd count, having issued and uttered as genuine the forged document marked M., which purports to be a *roobukaree* of the officiating collector of Balasore, dated the 19th September 1850 A. D., knowing the same to be forged and fabricated; and 3rd count, aiding and abetting the said Bhagutchurn Maintee in issuing and uttering as genuine the forged document marked M., which purports to be a *roobukaree* of the officiating collector of Balasore, dated the 19th September 1850 A. D., knowing the same to be forged and fabricated.

CRIME ESTABLISHED.—No. 1, forgery; and No. 2, issuing the forged document M., knowing it to be a forgery.

Committing Officer, Mr. W. J. Allen, magistrate of Balasore, Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 12th December 1851.

Remarks by the sessions judge.—"Chintamonee Singh, the prisoner No. 2, was a mohurir on the collector's establishment, and Bhagutchurn Maintee, the prisoner No. 1, was employed by him as a *taid nuvees*, or assistant writer, and likewise occasionally assisted the other *amlah*; and having, it appears, suffered annoyance, and been put to considerable expense by *dustucks* being constantly issued from tehseeldar's cutcherry at Bhudruck and served on him through *peadahs*, on account of the sudder *jumma* of his *kismut* of mouza Rumeelah, which amounted in the aggregate to only 11 annas, 10 pie *per annum*, he was desirous that he might be allowed to pay the small sum of 3 annas, 10 pie, thus due from him, into the collector's treasury at

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Balasore, and that the tehseeldar might be directed, in the event of his falling in arrears in future, to cause his property to be attached and sold through the pergunnah canoongoe, and that the system of serving *dustucks* on him through *peadahs* might be put a stop to, and to obtain his object, he dropped a petition into the collector's petition box, praying that the necessary order might be issued; and then, before any order was passed, he drafted a *roobukaree*, the document marked M., bearing date the 19th September 1850, containing the requisite instructions, and affixed thereto an old signature of the sherishtadar, which he had cut off some other document, and likewise forged the signature of the collector to the *roobukaree*, though the latter fact was not noticed in the magistrate's proceedings committing the prisoners, in all probability, because the forgery was so palpable and clumsily executed, and the prisoner No. 2 transmitted a copy of the said *roobukaree* with the signature of the sherishtadar and collector attached thereto, to the office of the deputy collector of Bhudruck, which was then *pro tempore* held at Balasore, the forgery having in the meantime been detected by the sherishtadar, when the *perwannah* issued to the Bhudruck tehseeldar on the strength of the said *roobukaree* was taken to him for signature. The prisoner No. 2 recalled the copy of the document despatched by him, and placed it in their serishta, whence he alleges it was surreptitiously abstracted by some one, when he was called up before the collector to answer certain questions in connexion with the forgery, and it was not afterwards forthcoming.

"Bhagutchurn Maintee, the prisoner No. 1, pleaded 'not 'guilty' to both counts; but on being called on for his defence at the conclusion of the evidence for the prosecution, he put in a petition, in which he admitted having written the *roobukaree*, and stated that he, at the instigation and dictation of Radhagobind Singh and Chintamonee Singh, two of the collectorate *amlahs*, wrote the draft of the *roobukaree* and showed it to Radhagobind Singh, who gave it to his nephew Chintamonee Singh, who again caused it to be written out fair and returned it to Radhagobind Singh, who got the sherishtadar's and collector's signatures affixed to it, though how he caused this to be done, he, the prisoner, did not know. And he further stated that he inferred that Radhagobind Singh had caused the *roobukaree* to be written to get the sherishtadar, Radhasham Doss, towards whom he bore great enmity, into trouble.

"Chintamonee Singh, prisoner No. 2, admitted that he issued a copy of the *roobukaree* marked M., but he denied having assisted in the preparation of the original, or that he knew it was a forgery. He also asserted that it was customary to write and issue copies of *roobukarees* before the originals were entered

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in the *roznamcha*, and that the *amlah* had said that such was not the practice, to screen themselves, and as the original *roobukaree* was only in his possession for a few minutes, it was not likely he would be able to detect the forgery of the sherishtadar's name, as neither the sherishtadar himself, nor the *peishkar*, or *perwanah nuvees* and other *amlah* had been able to detect that the sherishtadar's signature had been let into, or joined to the *roobukaree*, and not being able to read English, he was unable to perceive that the collector's signature had been forged. He also filed a petition in addition to the above, stating, that both the original and copy of the *roobukaree* was written by Bhagutchurn Maintee, the prisoner No. 1, and as it was his duty to write and issue copies of such documents, he, after comparing the copy with the original, which, as the sherishtadar's and collector's signatures were attached to it, he supposed to be genuine, despatched it to the deputy collector's office, and afterwards brought it back thence by order of the sherishtadar, &c.

"The oral evidence adduced by the prosecution establishes the facts of the *roobukaree* marked M., being in the handwriting of the prisoner No. 1, and of his having been employed at the time of writing it as *taid nuvees* by the prisoner No. 2, and that it is the ordinary practice in the cutcherry to register orders and *roobukarees* in the *roznamcha* before copies are written and issued from the office, though in cases of emergency, they are occasionally issued prior to registry; also that the endorsement on the back of the said document, to the effect that the copy of it had been issued, is in the handwriting of the prisoner No. 2.

"The documentary evidence exhibits the forgery and corroborates the oral testimony relating to the identity of the handwriting of the *roobukarees*. The prisoners named several witnesses in their defence, but none of them state anything in their favor, except that they previously bore good characters. Radhagobind Singh witness No. 15, who is one of the *amlah* attached to the collectorate, and the person alluded to in the prisoner's answer, further stated that copies of orders were issued from the collectorate before being recorded in the *roznamcha*.

"The *futwa* of the law officer convicts Bhagutchurn Maintee, the prisoner No. 1, of forgery, and issuing as genuine the document marked M., and Chintamonee Singh, the prisoner No. 2, of issuing and aiding in issuing the said document, knowing it to be forged, on violent presumption, and declares them liable to *tazeer*.

"And as Bhagutchurn admits having written the *roobukaree* M., when no order of the nature therein embodied had been passed by the collector, I consider the crime of forgery is fully established against him, and that his objection to the effect

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that Chintamonee Singh and Radhagobind Singh instigated him to do so, is no extenuation of his guilt, and with regard to Chintamonee Singh, it was, under any circumstances, his duty to have ascertained that the document was genuine before he wrote or caused the copy of it to be written, and issued to the deputy collector, and the circumstance of the *roobukaree* having been engrossed by Bhagutchurn Maintee, for whose advantage it was written and issued, should have made him more particular than usual in ascertaining that fact. Besides this, it is clear, from the very palpable nature of the forgery of the sherishtadar's name (and likewise the name of the collector, though it is not stated in the magistrate's proceedings that it is a forgery,) and the fact of the prisoner No. 1 being his, Chintamonee Singh's, assistant mohurir, that he could not but have been aware that it was a forgery, and consequently I consider, that the crime of issuing the forged document M., knowing it to be a forgery, is also established against him. Therefore, as the offence of forging the sherishtadar's and collector's signatures, by persons employed in the collectorate is a grave one, notwithstanding the injuries done or advantage gained by the forgery in the present instance is exceedingly small, I, under all the circumstances, sentence Bhagutchurn to three (3) years' imprisonment with labor in irons, and Chintamonee Singh to two (2) years' imprisonwithout labor."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed, No. 1, Bhagutchurn Maintee, who admitted at the trial that he wrote the forged *roobukaree* at the instigation of others, now pleads that he is a minor, and that the commission of such a crime as forgery was beyond his strength of understanding. He is 17 years of age, and the plea of incapacity is, therefore, worthless.

"The prisoner Chintamonee admits that he made a copy of the forged *roobukaree*, and issued it, but not with a guilty knowledge. It is in evidence that he was sent by the serishtedar to the office of the deputy collector to recall the said *roobukaree*, and that he received it back. He affirms that he placed it amongst the other papers and some one made away with it; but he showed it to no one, and the presumption is therefore strong that he destroyed it; but, be that as it may, he admits that he issued it, and the fact of the prisoner Bhagutchurn Maintee being his assistant, and of no such *roobukaree* having been held or made by the collector, which must have been within his knowledge, and the palpable nature of the forgery of the collector's and sherishtadar's names, afford violent presumption that he made and issued a copy of the forged document, knowing it to be forged. I see no reason to interfere with the sentences passed by the sessions judge."

PRESENT:

A. J. M. MILLS, and R. H. MYTTON, ESQRS., *Officiating Judges.*

GOVERNMENT

versus

MATHOO MUSSULMANEE (No. 1).

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Case of MATHOO MUSSULMANEE.

Held, that it is no sufficient reason for not passing a sentence of death on a prisoner convicted of murder of a child for its ornaments, that the culprit is only sixteen years of age, as she was of an age to discriminate right from wrong, and the crime is one of the most atrocious description.

CRIME CHARGED.—1st count, wilful murder of Sumeer Chokra, for the sake of his ornaments; 2nd count, theft of property, value rupees 2-4, belonging to the deceased; 3rd count, having in her possession a silver waist girdle, value rupees 2-4, knowing it to have been feloniously acquired by the wilful murder of Sumeer Chokra.

Committing Officer, Mr. E. Jenkins, magistrate of Howrah.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 27th November 1851.

Remarks by the sessions judge.—"The prosecutor's house is at Bawungatchea, about one-quarter, or three-eighths of a *coss*, from the thanna of Sulkea. On the 10th of June last, he was in Calcutta and was called home to see the dead body of his son Sumeer, who was about five or six years old. It appears that there was a report in the village that a child was drowned, and all the inhabitants who had children were in great alarm. Ramdhun, (witness No. 21,) who had a nephew and saw the body floating in a tank, dragged it from deep water. It was then discovered to be the body of Sumeer. An inquest was held on the body where it was found, but little information can be gathered from what was then observed repecting the manner in which the boy died or was killed. The civil surgeon examined the body the same day, and in his opinion the boy was killed by the pressure of a hand or foot on his neck which caused strangulation. There was extensive swelling on the right side of the face, which might have been caused by a blow. There was considerable extravasation of blood beneath the integuments on the right side of the neck, but not all round the throat; there was frothy mucus in the windpipe and issuing from the mouth. The vessels of the brain were conjested, but there were no marks of strangulation peculiar to drowning. The boy might, in the opinion of the civil surgeon, have been strangled by pressure of a hand or foot, while the body was under water.

"The prisoner, Mathoo, was at once accused (as is most probable) owing to what was said by a child, the elder brother of Sumeer, who did not know the nature of an oath, and whose evidence was not taken. She was apprehended at her own house,

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which is about as far as a voice can be heard from where the body was found, before the arrival of the police by the witness No. 1, who is a neighbour, and witness No. 15, who is a relation of the prosecutor and in whose house he lives. Mathoo had on a silver chain which belonged to the boy Sumeer, and which was visible through her thin dress. It is fit for a much older person than Sumeer was, but it was bought some years ago for his elder brother, as is stated by the prosecutor and witness No. 15, who lives with him, but who had previously said he had never had the chain in his hand. When the police arrived the prisoner confessed at the place where the body was found at 4½ P. M. Before the body was sent to the station, she told a highly improbable story, which ended in acknowledging that she held the feet of the boy while her uncle Khatab pressed his head under water. The improbability of the story consists in her stating that the boy was by her and her uncle hanged by the neck at her house, until he was taken down and recovered by her with water and fanning; and that he was then taken off by Khatab to the tank and that she followed them. It is not only in itself improbable that she should have recovered the boy after he had been hanged, and that the boy should have followed Khatab so far, and eaten, or wished to eat, and to fish, as she said was the case, but witnesses Nos. 17 and 18, who first gave their evidence on the 11th of June, state that they saw Mathoo going out catching grasshoppers with the boy Sumeer and without Khatab; and there was no mark on the neck of the boy of a rope having been put round it. However, the prisoner told the same story the next day between 10 and 11 A. M., as all the witnesses say, or between 1 and 2 P. M., as the magistrate has certified, before the magistrate, and she stated that the boy was first hanged at her house until blood came from his mouth, and that she so recovered him by water and air, that he not only went to the tank, which is as far off as a man's voice can be heard, but that he ate *korindas*, and wished to fish, after which she assisted her uncle to drown him. A woman was seen by witness No. 20 running with wet clothes from the neighbourhood of where the body was found, but there was no evidence receivable that any wet clothes were obtained from the prisoner's house, nor was there any search made for wet clothes of the uncle, indeed the weather was so hot, that they might have dried before the search. When the body was first discovered, it was floating in water clear of weeds which would make one suppose it must have been dead for several hours, and longer than the direct evidence would show that the boy was missing. It is singular that Mathoo should have put on the chain in a conspicuous manner and that she should not have taken it off and hid it when the uproar was made.

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"Respecting the truth of the confession, I must observe that all the circumstantial evidence tends to show that Mathoo was alone engaged in the crime. She alone was seen with the boy. A woman alone was seen to run off with wet clothes. She had all the property which was obtained by the murder. Her uncle Khatab mixed with the people when she was accused, and told them where Mathoo was when she was apprehended, yet what reason was there for accusing him, if he had had nothing to do with the crime? It might have been that she was told to make the statement, and that she was told that the chief blame would not fall on her. Khatab did not confess on the first day over the body, yet he did confess the next day before the police, and denied his guilt again the same day before the magistrate, and his having done so, causes an increase of suspicion that the police used an improper influence to obtain the confessions. The law officer cannot trust the confessions, and I also disbelieve a great part of what the prisoner has stated. The chief blame is thrown on the uncle of the prisoner, whom I see no reason for thinking guilty, yet there was not time to have used such influence on the woman to cause her to confess such a crime over the dead body of a murdered child, unless she had had a share in the murder. In my opinon, she took an active part in the murder. It is proved by her own confessions, which are supported, as they relate to herself, by circumstantial evidence, *viz.*, I believe that she was seen to go out with the boy, and that a woman was seen to run past the labourer Kalachand, witness No. 20, and that the prisoner had the silver chain on her person, when she was apprehended, and that it had been taken from the deceased boy. I can record no circumstances by which her crime is extenuated, and I think she is deserving of the greatest punishment.

"The law officer acquits the prisoner, but I find her guilty of the murder of Sumeer Chokra for the sake of his ornaments, and I propose that she be punished with death."

Remarks by the Nizamut Adawlut.—(Present: Messrs. R. H. Mytton and A. J. M. Mills.)—MR. MYTTON.—"The evidence of the assistant surgeon leaves no doubt but that the boy Sumeer was strangled. The confession of the prisoner Mathoo to the darogah, which has been proved to have been voluntary, contains a direct admission of taking an active part in the murder, *i. e.*, holding the feet of the deceased while her uncle Khatab pressed the head and neck under water. Her confession to the magistrate hardly bears the construction put upon it by the additional sessions judge, *viz.*, that *she assisted* her uncle to drown the deceased. She states that 'her uncle pushed the 'boy into the water, but he began to swim. She went to catch 'him, when Khatab put his foot on his neck and held him down

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'till he was dead,' she does not say that she did catch the boy. The fact of the clothes which she had on being wet at the time she gave them up, leads to a belief that the first statement of active participation in the murder is the true account. In addition to her confessions there is strong circumstantial evidence against the prisoner. She was seen in the deceased's company a very short time before the body was found. A witness (Kalachand) saw a woman running away in wet dark clothes (such as she had on) about the time the murder must have been committed, and lastly, the stolen property was found upon her person. The *futwa* of the zillah law officer acquits the prisoner; that of our law officer convicts her of the crime charged in the first count, *viz.*, murder of the deceased for the sake of his ornaments, and declares her liable to *akoobut*.

"In this finding I concur, and the only circumstance to be considered in passing sentence is, whether the youth of the prisoner (she is only sixteen years old) is a sufficient reason for sparing her life. I find that the preponderance of precedent is on the side of mercy in such a case; but there also are instances of capital punishment being inflicted. The sessions judge sees no grounds of extenuation, and proposes a sentence of death. The prisoner is certainly young, but not of such an age as not to know right from wrong. The crime was perpetrated with great daring, in open day, and at a tank surrounded by dwellings, and in my opinion calls for severe example. In concurrence with the recommendation of the sessions judge, I would pass a capital sentence.

"I observe that the other prisoner has been acquitted and released by the sessions judge. There were some reasons to doubt his guilt, but there was strong proof against him; and judging from the evidence given by Pooty, the mother of Mathoo, before the magistrate, there might have been further presumptive proof obtained had she been examined."

MR. MILLS.—"I concur in the conviction of the prisoner, Musst. Mathoo, of the wilful murder of the boy Sumeer, for the sake of his ornaments.

"The prisoner, though only sixteen years of age, has committed a crime which is of the deepest dye, and evidences the most deliberate malice, and I am of opinion that in justice to the public she should suffer death. I have the less hesitation in passing this sentence, because the facts of the case lead to the belief that the act was done by her alone.

"The interested evidence of Pooty, the mother of the prisoner, as to her little child telling her that he had seen the prisoner Khatab drown the boy in the tank, is uncorroborated, and therefore not creditworthy; and the confession of Khatab, which is

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the only evidence against him, and which was not made until the day following his arrest, on which day he denied his guilt, is open to the gravest suspicion.

"The prosecutor and the neighbours had no suspicion against him; indeed the prosecutor distinctly deposed to that effect at the trial. The prisoner went with the villagers to the tank and searched for Mathoo, and was the person who informed the witness Roopchand of her return to her house, and urged him to seize her quickly. The circumstantial evidence, too, though strongly criminating Mathoo, in no way implicated him, and I see, therefore, no reason to think that he was concerned in the murder.

"The improbability of that part of Mathoo's story, which relates to Khatab hanging the boy by the neck at her house, and to her taking him down and recovering him, is confirmed by the medical evidence, and strengthens the impression arising on the facts of the case, that she accused her uncle to save herself. The prisoner is a married woman, and she will undergo the sentence under the usual provisions in cases of pregnancy."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

ROSHON

versus

USGUR HUWALADAR (No. 1), ABASS ALEE (No 2), KUMMEEROODDEEN (No. 3), KALOO (No. 6) AND MONEEROODDEEN (No. 11, APPELLANT).

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Case of USGUR HUWALADAR and others.

One year's imprisonment considered too lenient a sentence against prisoners proved to have incited an assault with a spear which produced death, and for which they were found guilty of aiding and abetting in culpable homicide.

CRIME CHARGED.—*Firstly*, culpable homicide of Torab brother of prosecutor; *secondly*, riotously assembling and wounding Torab; *thirdly*, aiding and abetting in the said crimes.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. H. S. Porter, deputy magistrate of Noacolly, at Dhukhin Shabazpore, vested with the full powers of a magistrate.

Tried before Mr. H. Stainforth, sessions judge of Tipperah, on the 22nd November 1851.

Remarks by the sessions judge.—"The prosecutor and his brother Torab met a body of men, among whom were the prisoners and one Kudderooddeen, who was carrying in his arms a goat belonging to them. Prosecutor took hold of the goat, when Moneerooddeen, (prisoner No. 11,) struck him twice on the neck with a bamboo club, and he relinquished his hold on the animal. Torab then took hold of it, when he was struck on the leg with a bamboo by Kaloo, (prisoner No. 6,) and wounded in the leg with a *soolfee*, or spear, by Moneerooddeen, (prisoner No. 11,) Usgur,

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(No. 1,) and Abass Alee, (No. 2,) inciting the assault. The wound caused hœmorrhage which could not be stopped, and Torab died in consequence of it seventeen days afterwards. The foregoing circumstances are clearly shown by the evidence for the prosecution. The prisoners all denied their guilt, Asgur (No. 1,) pleaded *alibi*, and that the gomashta of his son Abass Alee, (No. 2,) had laid a complaint of plunder against the prosecutor and others, which had been dismissed, and that this had caused enmity and the present complaint.

"The two witnesses, whose evidence was taken to prove his pleas of enmity and *alibi*, denied knowledge of them, and the case cited was not against three out of four of the eye-witnesses, who have all implicated this prisoner and Abass Alee. Abass Alee, (No. 2,) pleaded enmity on the ground asserted by the preceding prisoner, and that Torab died of illness as his witnesses would prove.

"His three witnesses denied knowing that Torab died of illness.

"Kummeerooddeen, (No. 3,) pleaded *alibi*, but did not attempt to prove it.

"Kaloo, (No. 6,) pleaded that the complaint had been made against him, because he had given evidence on the complaint made by the gomashta of Abass, which has been already mentioned. He called no witnesses.

"Moneerooddeen pleaded *alibi*, and that he was a witness in the case mentioned by Kaloo. He also called no witnesses.

"The mooftee's *futwa* declares Moneerooddeen guilty of culpable homicide, and the other prisoners, convicted by me, of aiding and abetting in that crime.

"Dissenting with his conviction of Kudderooddeen, I have referred the case for decision in regard to that prisoner to the Sudder Court, and concurring in the remainder of his *futwa*, I have sentenced Moneerooddeen, (No. 11,) to five (5) years' imprisonment with labor and the rest of the prisoners convicted to one (1) year's imprisonment with labor commutable with a fine of rupees twenty (20) each."

Sentence passed by the lower court.—Prisoners Nos. 1, 2, 3 and 6 to be imprisoned without irons for one (1) year and to pay a fine of rupees twenty (20) each, on or before the 1st December 1851, or in default of payment to labor until the fine be paid or the term of the sentence expire, and No. 11 to five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoners in this case have been convicted on full and satisfactory proof: Moneerooddeen of culpable homicide by wounding with a spear, and the other prisoners of being present, aiding and abetting. They have preferred an appeal, urging the same matter in support thereof as they did in their

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defence, which is not of such a nature and so proved as to warrant acquittal. I see no reason to interfere with the conviction, and have only to remark that I think that one (1) year's imprisonment was too lenient a sentence to pass against Usgur and Abass, who were proved, as stated by the sessions judge, to have incited the assault in furtherance of an illegal act, not even attempted to be justified.

"The appeal is rejected."

PRESENT:

J. R. COLVIN, Esq., *Judge*.

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BHOLANAUTH PODDAR

versus

BHOLA PATNY (No. 1), RAUJ MOHUN PATNY (No. 2), SUNKERNAUTH (No. 3), PUNDIT PATNY (No. 4), GOURA PATNY (No. 5), KOOTOORAH PATNY (No. 6), RAMPERSAUD PATNY (No. 7), MADHO PATNY (No. 8), BYDENAUTH PATNY 1st, (No. 9), RAMAH PATNY (No. 10), RUTTON PATNY 1st, (No. 11), BYDENAUTH PATNY 2nd, (No. 12), RAMNARAIN SINGH (No. 13), CHURN PATNY (No. 14), HARRAEE PATNY (No. 15), BHYRUB CHUNG (No. 16), RUTTON PATNY 2nd, (No. 17), RAMGUTTY CHUNG (No. 18), KISHEN MOHUN CHUNG (No. 19), DAGUN PATNY (No. 20), KISHEN MOHUN PATNY (No. 21), SHEEBNAUTH DASS (No. 22), BASSEERAM CHUNG (No. 23), GOUR MOHUN PATNY (No. 24), GOOPEE PATNY (No. 25), DUSSORUTH KYBERT (No. 26), GOLUCK CHUNDER SURMAH (No. 27) AND SHEIKH JAUN MAHOMED (No. 28).

Convictions and sentences for dacoity on a large gang of dacoits from the Tipperah district, who committed the crime in Dacca, carrying off property and cash to the value of Rs. 4,638-10-15, upheld by the Nizamut Adawlut. The complete confessions made by all the prisoners before the police, (upon their apprehension at various dates, and many of them at different places,) and subsequently repeated before the magistrate, might have been regarded with suspicion by the court, had they stood alone. But the confessions were confirmed by full and independent evidence to the giving up, by *all* the prisoners, of portions of the plundered property, to the aggregate value of rupees 2,379-13-6, and by many incidental facts on the record, and the court saw, therefore, no room for doubt as to their substantial truth and accuracy.

CRIME CHARGED.—Nos. 1 to 25, 1st count, dacoity, having forcibly entered the house of the prosecutor on the night of the 27th Cheyt last, armed with bludgeons and other weapons, and with having plundered therefrom property and cash valued at Company's rupees 4,638-10-15; 2nd count, being accomplices in

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the aforesaid crime of dacoity; 3rd count, belonging to a gang of dacoits, and 4th count, having in their possession plundered property knowing it to be plundered, and Nos. 26 to 28, knowingly and wilfully receiving property acquired by the aforesaid crime of dacoity.

CRIME ESTABLISHED.—Nos. 1 to 19, dacoity in the prosecutor's house, and with having in their possession plundered property, knowing it to be plundered; Nos. 20 to 24, being accomplices in the crime of dacoity, and having in their possession plundered property knowing it to be plundered; No. 25, being an accomplice in the crime of dacoity in the prosecutor's house, and Nos. 26 to 28, receiving plundered property knowing the same to have been so obtained.

Committing Officer, Mr. J. S. Spankie, officiating magistrate of Dacca.

Tried before Mr. R. H. Mytton, commissioner, with powers of sessions judge, on the 13th November 1851.

Remarks by the commissioner.—"The circumstances* of this case are noted in the return for August last. The court in

* "The prosecutor, who is a pawn-broker and general merchant, was robbed by a band of dacoits, of clothes, jewellery, old coin, gold mohurs and cash, to the extent of rupees 4,500, on the night of the 8th of April. The darogah of the thanna Ramsoondur, and that of another thanna, Doorgapersaud, who were employed in making inquiries, were for some time unsuccessful. Doorgapersaud had gone to some distance with a convict to endeavour to obtain a clue, when the prosecutor's son, who is not always sane, mentioned to Ramsoonder Darogah that on the day of the occurrence three strangers had come and bought some *choora*, and on the pretence of obtaining fire had gone inside the *baree* and seen it; that they described themselves as coming from the other side of the Megna. The darogah states that this reminded him that in an affray case, which occurred some time ago, Cassee Patny and others, from Meercote, in zillah Tipperah, had been concerned as *latteeals*, and that it was very possible that they may have committed this dacoity. He sent a man to make private inquiries, and he reported that a number of the Patnys had been absent from home on pretence of being engaged as *latteeals* at the time of the dacoity. He then wrote a note to Ramchurn, a burkundauz of his thanna, then on leave, and residing near Meercote, on the subject. The reply, a verbal message, tended to confirm the suspicions, and two darogahs having joined and received still further corroboration from a man named Bhyrub Dutt, who had an amour with one of the Patnys' wives, and who named four men in particular, Bhola, Goura, Pundita and Kishen Mohun, they went to Meercote, and seized Bhola, and two men, Kootooreea and Dagun, living in the same homestead. The house was searched, and in digging in the house, a silver *chunderhar*, gold *baola*, some gold beads, and a piece of Tunzeeb cloth were found, which prosecutor's son, who accompanied the party, immediately recognized as his father's property. Bhola made a full confession that evening, naming the whole gang, twenty-five in number. They were all arrested one after another, and all confessed, producing their shares of the booty from innumerable hiding places and persons to whom they had made them over. In this manner

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their register's letters, of 5th September, directed further evidence to be taken and a fresh defence. This has now been

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about four hundred items of plundered property were recovered, value rupees 2,379-13-6; amongst them are quantities of new jamdanee muslins, old Sicca coin, gold mohurs, and massive silver, and gold ornaments. The whole forms about three coolies' load. All the twenty-five prisoners made most circumstantial confessions before the magistrate, admitting, except as regards nine items, that the whole of the property sent in by the darogahs was obtained by dacoity from the prosecutor's house, and that they had given it up as such. The confessions, therefore, being proved, the finding of the property and its belonging to the prosecutor is also proved. In corroboration of the first point, however, I have taken the depositions of the police officers, who drew out the statements of the circumstances under which each batch of property was found. They depose to the statements in question containing a true account thereof, and to having been taken down at the time. These statements being thus made documentary evidence, they are filed with my proceedings, and their places supplied with copies. The evidence of the two officers in charge of the property since it came in, proves that what is now produced in court is that sent in by the darogahs, and that the labels have not been changed. This is more convenient and satisfactory proof in my opinion than the evidence of villagers to the point. They most probably could not at any time, but certainly not after the lapse of two or three months, select the particular items which each saw discovered or produced. I am aware, from long experience as a magistrate, that witnesses cannot do this as they are too often expected to do in sessions courts, without having their memories refreshed by the darogah or nazir before the trial.

"As to the identity of the property as the prosecutor's, we have the admission of the prisoners to the darogah and (as before stated with exception to nine items) before the magistrate. Regarding these nine items belonging to the prisoners, there is no proof forthcoming. The statements of the prisoners after commitment indicate that the line of defence which they intended to take did not involve the question of the ownership of the remainder. The prosecutor very candidly stated to me that to the best of his belief, the property was his, but that his brother, (deceased,) used to look after the pawn-broking business, and he could not speak more positively as he did not often see the things, and no person but his son was more familiar with them than himself. The son is not at present sane, and the confessions of the prisoners, of the property being prosecutor's, could derive no corroboration from the other witnesses. I therefore deemed it superfluous to take their depositions. The subscribing witnesses to the confessions in the foujdaree are fifty-six in number. I deemed it convenient and satisfactory to examine the magistrate and acting magistrate themselves. Their evidence convincing me that the confessions had been taken with every propriety, I considered that to take the evidence of the fifty-six subscribing witnesses would be a useless waste of some days' labor, and expose numbers to needless detention; I therefore abstained from doing so. The first twenty-five prisoners to whom the above remarks chiefly apply for the most part pleaded *alibis*, citing witnesses, others simply appealing to their previous good character. Very few, however, had made known to the magistrate that they wished for the attendance of the witnesses they name in my court, consequently very few were in attendance. Had they been so, however, and had they supported the plea, it would not have availed in opposition to the strong proof of guilt. The entire gang of twenty-five

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done, and nothing has been elicited to throw any doubt on the justice and propriety of the sentences which were passed by me in August. They have, therefore, been renewed, with a slight relaxation in favor of the three last prisoners convicted of receiving."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—" I have, on the renewed appeal of the two prisoners, No. 1, Bhola Patny, and No. 5, Gourah Patny Manjee, and with reference to the appeal petitions of all the prisoners, excepting the five mentioned in the margin, upon the trial as it was at first concluded by the commissioner with the powers of sessions judge, attentively examined the mass of evidence in this heavy case, and I see no ground for interfering with the convictions or sentences in regard to any of the prisoners.

No. 3 Sunkernauth.
" 9 Bydenauth Patny.
" 26 Dussoruth Kybert.
" 27 Goluckchunder Surmah.
" 28 Sheikh Jaun Mahomed.

" Upon a mere view of the Mofussil confessions of the prisoners, much doubt must certainly be felt as to the manner in which such full disclosures of their guilt were obtained by the police from twenty-eight persons, apprehended at various dates from the 16th May 1851 up to the 3rd, and in one instance (that of the prisoner No. 19, Kishen Mohun Chung) to the 22nd June following, and many of them in different places, so that the confessions made by all the prisoners, without exception, are not to be accounted for by such a possible fact as their having been brought and confronted together, upon some clear proof secured against them, and having been in that manner surprised into a sudden and universal admission of their guilt. Had the case rested *alone* upon the recorded confessions, even

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dacoits have been convicted. Those indicated in the confessions to be sirdars* have been sentenced to fourteen (14) years', that portion† which accompanied the sirdars in the attack on the prosecutor's house to ten (10) years', and those who‡ remained in charge of the dacoits' boats to eight (8) years' imprisonment, with labor in irons. I have not added banishment, as Dacca is in reality banishment to them, they being natives of Tipperah. Of the five prisoners charged with receiving with guilty knowledge, three§ have been convicted on their confessions before the darogah and magistrate and two acquitted, their statements not amounting to an admission of the charge brought against them, and there being no other proof.

" Should the Nizamut at any time have occasion to look into this case, they will, I think, find it convenient to have before them my English analysis of the case in a tabular form, which shows at one glance the proof against the defence made by each prisoner together with the evidence offered in defence."

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* Nos. 1 to 5. † Nos. 5 to 19. ‡ Nos. 20 to 25.

§ Nos. 26 to 28, two (2) years' imprisonment, each with labor and an iron ring on one leg.

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though those made before the magistrate are shown to have been full, and *at the time* without the least exercise of improper influence, it would, in my judgment, have been difficult to place implicit reliance on these numerous self-criminating statements, which could have scarcely been procured from the prisoners by the Mofussil police without resort to some unfair means, whether of persuasion or of intimidation. Indeed, two of the witnesses, No. 27, Sonaram Chund, and No. 29, Obhyechurn Dhur, by whom many of the Mofussil confessions are attested for the prosecution, speak (see their answers when examined for the prisoner No. 16, Bhyrub Chung) of that prisoner having been illegally detained for eight or ten days in the Mofussil, although no trace of such detention appears, as regards any prisoner, on the record of the police inquiry.

" But in support of the full confessions to the magistrate, there is, in this case, good and independent evidence to the giving up by *all* the prisoners of portions, to a very large amount in the aggregate, of the plundered property. Most of the property so recovered is shown to have been found on the indication of the prisoners themselves, and a good deal was also obtained upon search made in their houses. Four of the prisoners* gave up only sums in cash, which could not, of course, be identified; but it is proved that these sums were delivered by them, before witnesses, as a part of the booty gained in the dacoity. Nearly all the prisoners, who have appealed, plead in their appeal petitions that they were ill-used by the police, and forced into appearing to give up property of which they know nothing, but which had been purposely placed where it was found, by the police or the prosecutor, in collusion with each other. Without saying that there are not cases in which frauds and malpractices of this kind have been committed, and admitting the propriety of scrutinizing with great caution all the circumstances connected with the finding of property, especially when alleged to be the consequence of a string of Mofussil confessions, it is, in this instance, plainly impossible that such masses of property could have been so clandestinely and abusively dealt with. There is, besides, no motive of interest or enmity which, on the record, can be suspected even as having led either the police or the prosecutor to charge the prisoners falsely, upon any such deep-laid scheme of conspiracy and wrong as the appeals suggest. The prisoners live across the Megna, at a considerable distance from the scene of the dacoity, in the Dacca district, to which latter district also the darogahs, who conducted the police investigation, are attached. The acci-

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Nos. 22 Sheebnauth Dass.	Nos. 13 Ramnarain Singh.
„ 23 Basseeram Chung.	„ 18 Ramgutty Chung.

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dental circumstances, which directed the search of the police against the prisoners, are all naturally disclosed in the course of the police reports. The minor indications of the case, likewise, which are often quite as important as the direct evidence, all tend to confirm the belief of the guilt of the prisoners. Thus, the prisoner No. 2, Rajmohun Patny, when asked on the 24th July, after his commitment for trial, whether he desired to summon any witnesses in his defence, replied that he *could have no such witnesses, as he had committed the dacoity*. This was *two months after* his recorded confession before the magistrate, which bears date the 23rd May. Again another prisoner, No. 22, Sheebnath Dass, who confessed to the magistrate on the 26th May, retracted his confession in a petition to that officer of the 13th June, and alleged that other prisoners, *the real dacoits*, had been led, through enmity arising out of land quarrels, to accuse him falsely as having been their accomplice.

"There is, therefore, here such proof of convincing facts, in support of the confessions before the magistrate, as leaves no room for question regarding the substantial accuracy and truth of those confessions.

"The case has been carefully and well prepared for trial by the magistrate.

"One of the prisoners, No. 5, Goura Patny Manjee, complains in his appeal petition, that only one of the witnesses, summoned by him for his defence, had been examined. On reference to the record, I find that this is the case, and there is no note,—which, for the regularity of the record, there ought to have been,—of the reason of the others not having been examined. These were all witnesses named by the prisoner before or upon his commitment. But, on referring to the reason given by the prisoner when naming the more important of these as his witnesses upon his commitment, I find that he mentioned them as able to prove that he was *at his own house* on the date of the occurrence of the dacoity, whereas, in his second defence on the trial as in his appeal petition, he alluded to them as able to prove that he was on that day *in restraint in his zemindar's cutcherry*. There can be no ground for taking the evidence of further witnesses, whensoever named, upon these contradictory allegations.

"There was no occasion for allowing, excepting as the sessions judge might himself think proper with a view to the ends of justice, any postponement of the trial for the evidence of any witness, who was, for the first time, named by a prisoner in his defence at the sessions."

PRESENT:

J. R. COLVIN, Esq., *Judge*.

GOUR MOHUN CHOWDREE

versus

ISHUR BAGDEE (No. 4), NURHURREE KOTALL (No. 5), NILOO HAREE (No. 6), DINOO HAREE (No. 7), CHIROO, *alias* CHIRU BAGDEE (No. 8), PROTAB POREL BAGDEE (No. 9) AND KANAEE BAGDEE (No. 10).

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Case of ISHUR BAGDEE and others.

Convictions and sentences for dacoity upheld by the Nizamut Adawlut. The villagers collected and attacked the dacoits, one of whom was cut down and secured, on the gang being driven off, and the other prisoners were apprehended partly on his statement, and partly from having been recognized at the time.

CRIME CHARGED.—Nos. 4 to 9, dacoity attended with wounding, and No. 10, being privy to the above dacoity attended with wounding before the fact.

CRIME ESTABLISHED.—Nos. 4 to 9, dacoity attended with wounding, and No. 10, being privy to the above dacoity attended with wounding before the fact.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J H. Patton, sessions judge of East Burdwan, on the 10th December 1851.

Remarks by the sessions judge.—"This is a very serious case of dacoity attended with wounding, and great credit is due to the villagers and chowkeedars for the gallant manner in which they opposed the robbers. The prosecutor is unable to give any details of the operations of the dacoits while inside his premises, having hidden himself on seeing one of them standing on the top of the enclosure wall, but speaks to the arrest of the prisoner Ishur Bagdee (No. 4), on the retreat of the gang, and his loss of property to the amount of rupees 185-12. The witnesses from Nos. 1 to 6 give, for the most part, a very detailed account of the affair, and state that about twenty-five dacoits attacked the prosecutor's house, having bound the chowkeedár of the quarter in which it is situated; that the villagers collected and assailed those outside with brickbats and stones, and were in turn attacked by them; that they eventually succeeded in making the dacoits quit the premises, and followed them as they retreated; that one of the dacoits, the prisoner No. 4, advanced and inflicted a spear wound on the witness Nundram, and was in turn cut down and secured by the witnesses Bulai Chowkeedar and Mudhu Haree, the former using a sword and the latter a club; that another of the gang, identified as the prisoner Chiru Bagdee (No. 8), armed with a sword and shield, rushed on the witness Denonath Dutt and inflicted a slight wound on his lower arm, who notwithstanding dealt him a blow with his club and caused him to drop his arms, which were secured and proved

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to be his property. This put a termination to the conflict; but while it was in progress, the prisoners Nurhurree Kotall (No. 5), Niloo Haree (No. 6), and Dinoo Haree (No. 7), were distinctly recognized by torch light at short distances, as also were three others, one of whom has been released by the magistrate, and two are still at large. The prisoners Protab Bagdee (No. 9) and Kanaee Bagdee (No. 10), were named in the first confession, and thus apprehended. These, together with the prisoner No. 4, confessed the crime both before the police and the magistrate, and the further evidence for the prosecution goes to prove that the prisoners Nos. 4, 8, 9 and 10 were absent from their houses on the night of the dacoity, and the prisoners Nos. 8 and 9 had slight wounds and marks on their person when taken. The prisoners, one and all, deny the charge before this court. The prisoner No. 4 says, that he went to seek employment in the village of Deagow (the scene of the dacoity) and was arrested unlawfully by the witness Nundram Haree, who holds a grudge against him, but names no witnesses to his defence. The prisoners Nos. 5, 6, 7 and 8 plead *alibis* and call witnesses in proof. The prisoner No. 9 makes no defence beyond asserting that both his confessions were given under the influence of intoxication from *gunja*, but declines to call witnesses; and the prisoner No. 10 simply confines himself to a denial of the charges, admitting his confessions as given before the police officers and the magistrate. Six witnesses were examined on behalf of the prisoner No. 5. Four of them do not prove the plea, and the evidence of the rest who attempt to do so is discordant and incredible. Three persons gave testimony in favor of the prisoner No. 6, with reference to the plea set up, but their evidence is utterly valueless, being vague, contradictory, and unworthy of belief. The like remarks apply to the two persons examined for the prisoner No. 7, and the single witness called by the prisoner No. 8 does not establish his plea. I have no doubt of the guilt of the prisoners.

" The identity and recognition of those who have not confessed, on the night of the occurrence, is clearly and indubitably established, and they are all named in the confessions. Owing to the enormous prevalence of dacoity in this zillah, I have awarded to the first six prisoners the extreme punishment sanctioned by the law. The offence of the prisoner No. 10 is quite of a mitigated character, amounting only to a guilty knowledge, and hence the leniency of his sentence. This is a very good commitment; but the magistrate should, I think, have stated specifically the grounds of his releasing Mudhu Bagdee, and omitting to take measures for the apprehension of Nubin Bagdee and Ramdhun Kotall. The former confessed in the Mofussil, and all three were recognized at the time of the dacoity,

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and are named in the confessions. For the satisfaction of the court, and in anticipation of a call similar to the one lately made in the case of Umbika Churn Mundul, punished by me without reference to the court in the month of June last, I have required that officer to state his reasons for thus acting, and shall append his explanation to the record of the trial. I am glad to notice that he has rewarded the parties who distinguished themselves in confronting the dacoits."

Sentence passed by the lower court.—Nos. 4 to 9, fourteen (14) years' imprisonment, and in lieu of stripes, to a further period of two (2) years, total sixteen (16) years' imprisonment each, with hard labor in irons, in banishment, and No. 10, seven (7) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"The prisoners rest their appeal mainly on the plea that no property was found on any of them. But No. 4 was apprehended at the time of the commission of the dacoity, and Nos. 5, 6 and 7 were recognized at the same time, as shown by the information immediately sent to the thanna. The direct evidence to the recognition among the dacoits of the prisoner No. 8, Chiroo *alias* Chiru Bagdee, is not satisfactory, as the two witnesses, who deposed to such recognition before the magistrate and at the trial, did not do so before the police up to the close of their inquiry, though one of them alluded doubtfully to having seen *some one like* this prisoner. The finding of a peculiar bone-handled sword, which has been identified as belonging to the prisoner No. 8, and had been dropped when the gang of dacoits went off, is, however, a strong ground of proof against him, and he was named from the first in the statement of the prisoner No. 4, who was seized on the spot, as well as in the later confessions of the prisoners Nos. 9 and 10. These two last-named prisoners, Nos. 9 and 10, were also named in the first statement of No. 4, and they confessed freely before the magistrate as well as to the police.

"I see no ground for distrusting the convictions or sentences."

MISCELLANEOUS CASE.

PRESENT:

J. R. COLVIN, Esq., *Judge*.

KHUDIRAM CHATTERJEA, (DEFENDANT), APPELLANT,

WAJIDULRUHMAN CHOWDRY, (PLAINTIFF), RESPONDENT.

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It is only *as a fine*, and by way of *additional punishment for the same offence*, that the amount of loss, caused by any wrongful appropriation of property, can be exacted, under Act XVI. of 1850, from a party convicted.

Therefore, an award of rupees 55, passed by a lower court, partly as simple fine and partly as compensation for loss sustained, is beyond the limits within which an appeal lies only to the magistrate. An appeal from such a sentence should be disposed of by the sessions court.

CRIME CHARGED.—Assault and murder.

This case was referred by the sessions judge of East Burdwan, on the 9th February 1852, under Act XXXI. of 1841, with the following remarks:—

"The case out of which this reference arises was decided by the law officer, who, on a charge of assault and plunder of grain, brought against the parties, made an order for fine, or imprisonment, within the limitation prescribed by Sections VIII. and IX. Regulation IX. of 1793, and a money award of rupees 40, as compensation for the loss sustained by the aggrieved party under Act XVI. of 1850.

"The irregularity alleged against the officials concerned is represented in the accompanying copy of a letter* addressed to the magistrate, and consists in his entertaining, and disposing of an appeal beyond his competence, and partially affirming an

From Sessions Judge to Magistrate of East Burdwan, No. 25, dated 31st January 1852.

"In the matter of Khudiram Chatterjea, (defendant,) appellant, and Wajidulruhman Chowdry, (plaintiff,) respondent, decided by you in appeal from the orders of the law officer, it appearing from the records of the case now before me in special appeal from the defendant, that you exceeded your competence in entertaining and disposing of the case, the sentence passed by the lower court as regards the award of damages being in excess of the punishment prescribed by Sections VIII. and IX. Regulation IX. of 1793, beyond which your appellate jurisdiction does not extend, I have the honor to request, with reference to Circular Order of the Nizamut Adawlut, No. 9, of 1851, that you will be good enough to explain under what authority you acted in the matter, the irregularity having been brought to my notice with the view of my submitting the case for consideration and orders of the superior court.

"I take this opportunity of remarking that the order of the law officer awarding a fixed sum of money (rupees 40,) as compensation for the loss sustained, partly affirmed by you, was illegal, and opposed to the provisions of Act XVI. of 1850, which prescribes the levy of a fine under restrictions, and a specific mode of realization to be applied, in whole or in part, in reparation of the wrong suffered."

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informal sentence passed by the law officer, the latter being chargeable with the original illegality.

"I append the magistrate's explanation* received in reply to my call, from which the court will perceive that he justifies both counts of his impugned proceedings. I cannot say that I concur in opinion with him as to the soundness of the arguments advanced; for by his own showing, even admitting the specialty of the reasoning as regards the first point, the law officer made two distinct and separate penal awards, which circumstance alone bars his interference as an appellate authority; and I perfectly disagree with him in thinking, with reference to the latter, that the law officer's adherence to the spirit of the law, as he terms it, is the slightest palliation of his gross and palpable disregard of the letter, expressly and clearly defined, or any legalization of the act done by him.

"As the parties suffering from the proceedings of the lower courts have represented their grievances to me, and I am unable to afford them the redress they seek, I submit their case for the consideration and orders of the superior court.

"The Nizamut Adawlut will, I hope, understand that I do not question the law officer's competence to pass the consolidated sentence, that officer being vested with special powers, but only its legality as an award conformable to the provisions of Act XVI. of 1850."

Resolution of the Nizamut Adawlut No. 217, dated the 21st February 1852.—(Present: Mr. J. R. Colvin).—"The court, having perused the papers above recorded, observe that the punishment awarded by the law officer, must be taken to have

* *From Magistrate to Sessions Judge of East Burdwan, No. 66, dated 7th February* 1852.

"I have the honor to re-submit the case of Khudiram Chatterjea, and, with reference to your letter, No. 25, of the 31st ultimo, to give the following explanation:—

"In taking up and deciding, on appeal, this case, I did so, considering the two orders to be separate ones, each within the limits laid down by Sections VIII. and IX., of Regulation IX. of 1793; for although they were given on the same date and on the same proceeding, yet I considered the one, (15 rupees fine, or 10 days' imprisonment,) to be the punishment for the offence the appellant was found guilty of, and the second (the award of 40 rupees) to be compensation for the loss sustained by the respondent, and that, therefore, the case was within my competence.

"I also was of opinion that the law officer's order was not illegal, as although he worded his proceeding thus—'that the prisoner pay 40 'rupees, the price of the rice, to the prosecutor,' instead of sentencing him, in the words of Act XVI. of 1850, to that amount of fine, yet he acted up to the spirit of that Act, by directing the restitution of the value of the property, the prosecutor had been deprived of, and also under the 2nd Clause of the same Act, ordered that, if not paid, the amount should be realized by distress and sale."

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been one of rupees 55 fine; for, by Act XVI. of 1850, it is only as a *fine*, and by way of *additional punishment for the same offence*, that the amount of loss, caused by any wrongful appropriation of property, can be exacted from a party convicted.

"The appeal in the case under reference, was, therefore, clearly beyond the competency of the magistrate. His order of the 30th December 1851, reducing the fine awarded by the law officer, on the 17th idem, to rupees 35, is consequently annulled, and the sessions judge will transfer the appeal to his own file, and himself dispose of it.

"He will point out, in his final order, to the subordinate officers, the manner in which a sentence of fine, to the amount of the value of stolen or misappropriated property, should be passed and recorded."

CASES

IN THE

NIZAMUT ADAWLUT.

PRESENT:

A. J. M. MILLS Esq., *Officiating Judge*.

CHUMUN SONAR

versus

MUNNEE GOALA, CHOWKEEDAR.

1852.

March 4.

Case of MUNNEE GOALA, CHOWKEEDAR.

The Nizamut Adawlut, in concurrence with the opinion of the sessions judge, and in dissent from the *futwa* of the law officer, acquit the prisoner on a charge of theft. The court deem the evidence to be too suspicious to justify conviction.

CRIME CHARGED.—Theft of property, valued at rupees 64-13-0, by unfastening the door of the house.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 11th February 1852.

Remarks by the sessions judge.—" The prisoner is chowkeedar of Pallee, where the prosecutor resides. The prosecutor's dwelling appears to have consisted of two separate compartments, between which there was no other communication than by the lane. The prosecutor and his servant Domee Sonar (witness No. 3,) were asleep in the western one, and his brother Gopal (witness No. 7,) and family in the eastern one, which had but one door, according to all accounts a strong wooden one, provided with bolts and chain.

" During the night of 26th November last, Gopal was awoke by sounds of thieves, and jumping up, caught hold of the prisoner escaping outside of the doorway, with a *petarah*, containing a few clothes, a small portion of the property said to have been stolen, in his hands. He at the same time observed three other thieves making off. He set up an outcry, which brought up the prosecutor, Domee Sonar, (witness No. 3,) and the other witnesses, who completed the seizure of the prisoner. The prosecutor and the witnesses Nos. 1, 2, 3 and 7 depose to the foregoing effect.

1852.

March 4.

Case of MUNNEE GOALA, CHOWKEEDAR.

"The prisoner has been consistent in his denial of the crime for which he stands arraigned, on every occasion pleading, that the prosecution had been got up against him out of grudge by the resident village maliks. Two of the witnesses called by him before this court attended, Noor Alee (witness No. 4,) and Modee Goala (witness No. 5,) and deposed to the prisoner's having been apprehended in his field by the village burrayl, Rooshun Alee (witness No. 2).

"The *futwa* of the law officer convicts the prisoner of the theft, and declares him liable to discretionary punishment by *akoobut*.

"The prosecutor, the three witnesses and Gopal adhere to the story set up by the prosecution, but my faith in their testimony, both in matter and manner, has been so much shaken under examination, that I cannot concur in the conviction, which, therefore, renders this reference necessary. The story for the prosecution is so suspiciously meagre in all its details, that, had the occurrence been a true one, instead of rehearsed for the occasion, there can be no excuse for witnesses, who arrived on the spot at once, not having observed and remembered every thing connected with it. Looking at their personal appearances I should say, the youth Gopal would have been unequal to seize the prisoner, unless at once aided by others. The theft is said to have taken effect by unfastening the single door of Gopal's room as above described; but how the thieves obtained forcible entry is left to conjecture. All the witnesses depose glibly enough in general terms to the unfastening of the door; but on being required, under examination, to describe the door and its fastenings, Gopal himself became silent; when asked how the thief had opened such a door, Domee (witness No. 3,) did not trouble himself to ascertain, and the prosecutor pretended the chain must have been loose. According to Gopal, he seized the prisoner inside the room with the *petarah* in his hand, thence both struggled outside the door, when, on the witnesses' assisting him, he snatched the *petarah* out of the prisoner's hands. Now this is not very probable in itself. The *petarah* was a large unwieldy one, and contained nothing valuable, as its weight must have indicated, which a thief would have readily abandoned inside the room, rather than struggle and be apprehended with it outside in his hands. It also contradicts the other witnesses, who also contradict each other. The prosecutor found Gopal and the prisoner struggling, and the *petarah* upset on the ground outside the door, when Roostum, burrayl, (witness No. 2,) picked up its contents. Domee (witness No. 3,) never saw Gopal snatch the *petarah* out of the prisoner's hands, but he saw it in the prisoner's hands, who let it fall on their, the witnesses, approaching. Meherban (witness No. 1,) saw it in the prisoner's hands,

but who took it from him, he cannot say; whilst Roostum, agreeing with Gopal as to his having snatched it out of the prisoner's hands, makes the prisoner pick up the contents, put them back into the *petarah* when Gopal placed it at the doorway. Further, both prosecutor and witnesses must be regarded with suspicion in any questionable matter, in which their village maliks might be concerned, and to which they would but too readily lend themselves. The prosecutor admits the prisoner to have been chowkeedar of the village the last seventeen years with the best character. On reference to the records, I find the prisoner was called for and punished by the magistrate in October last, relative to neglect about a sick traveller, when the prisoner in his defence of 27th of that month, named the village maliks, some of whom were fined, and others called for; in revenge for which, the prisoner attributes the concoction of the present prosecution. I would acquit the prisoner, under a strong suspicion of his story being the most probable one of the two."

1852. March 4. Case of MUNNEE GOALA, CHOWKEEDAR.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The circumstances of the case, as related by the prosecutor and his witnesses, are suspicious, and the evidence is too inconsistent to warrant the conviction of the prisoner. The probabilities of the case too are in favor of the prisoner's innocence. I acquit him accordingly and direct his immediate release."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

SEERAM PUTWAREEH

versus

SHUFFER ALEE (No. 3), SOMURUDDY (No. 5), GOORAH GHAZEE (No. 6), JHOORAH GHAZEE (No. 7), RAMMONEE DASS (No. 10) AND NURNARAIN DASS (No. 12).

1852. March 4. Case of SHUFFER ALEE and others.

Sentence of fourteen years' imprisonment in banishment for dacoity, confirmed.

CRIME CHARGED.—1st count, illegally assembling and attacking the house of the prosecutor at night and committing dacoity, and plundering cash and property therefrom, amounting to Company's rupees 5,396-6-3; 2nd count, being privy to the dacoity before and after the fact, and 3rd count, Nos. 3, 5, 6 and 10, knowingly and feloniously receiving and having in their possession property obtained by dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. E. F. Radcliffe, officiating joint magistrate of Noacolly, Tipperah.

Tried before Mr. H. Stainforth, sessions judge of Tipperah, on the 28th November 1851.

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Case of SHUFFER ALEE and others.

Remarks by the sessions judge.—"The prosecutor's statement is, that twenty or twenty-eight men, unknown to him, came to his house, on the night of the 13th of Cheyt, with torches, and entered that part of it, where his brother Brijooram and his servant Booda Ghazee were, broke open his box, and carried off property and cash to the value of rupees 5,396-6-3, of which only a small part, rupees 201-0-6, has been recovered.

"On the 19th idem, Aynooddeen and Teeta Ghazee presented a petition to the darogah, stating that they had heard that the prisoners Nos. 12, 17, 21, and sixteen other persons, had committed the dacoity; and this led to the arrest of the prisoners numbered in the calendar from 1 to 21.

"The six prisoners, who have been convicted, were convicted on their confessions before the magistrate only, as I distrusted the fairness and legality of the proceedings of the police, but it is observable, that each prisoner convicted is named in the confessions of others, and that all, but Sumoruddy and Rammonee, have been before arrested on suspicion of dacoity.

"They have been sentenced to fourteen (14) years' imprisonment, with labor in irons and in banishment.

"The informants have been rewarded to the extent of my power."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The confessions of the prisoners to the magistrate, relied on by the sessions judge, are most circumstantial, and bear the stamp of truth. They are proved to have been voluntary. I see no reason to interfere with the sentence passed by the sessions judge."

PRESENT:

A. J. M. MILLS, *Officiating Judge.*

FYZOOLLAH SHEIKH

versus

SHADHOO GOWALAH (No. 7, APPELLANT), SHEIKH ASSANOOLLAH (No. 8, APPELLANT), GHOLAM GHOUSE (No. 9, APPELLANT), RAJIB HARREE DAGEE (No. 10, APPELLANT), DEBEE BAGDEE, CHOWKEEDAR (No. 11, APPELLANT), SUNNIASEE BAGDEE (No. 13, APPELLANT), KAMOO SHEIKH (No. 15), ABDOO SHEIKH (No. 16), AMANUT SHEIKH (No. 18, APPELLANT), MANICK BAGDEE (No. 21, APPELLANT), PURAN HARREE (No. 22, APPELLANT), PANCHOO BAGDEE DAGEE (No. 23), PURESH HARREE, CHOWKEEDAR (No. 24) AND KANGAL RAE DAGEE (No. 25, APPELLANT).*

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Case of Shadhoo Gowalah and others.

Sentence of the sessions judge affirmed by the Nizamut Adawlut.

CRIME CHARGED.—1st count, dacoity attended with wounding, committed in the prosecutor's house, from whence property, valued at rupees 174-12-0, was plundered; 2nd count, accomplices in the above-mentioned dacoity; 3rd count, knowingly receiving plundered property acquired by the above-mentioned dacoity; 4th count, accessary before and after the fact to the above-mentioned dacoity; and, 5th count, privity to the above-mentioned dacoity.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer, Mr. F. A. E. Dalrymple, magistrate of Beerbhoom.

Tried before Mr. H. F. James, sessions judge of Beerbhoom, on the 15th December 1851.

Remarks by the sessions judge.—"The house of the prosecutor was attacked by dacoits, on 13th Kartick last, (October 29th 1851), and property to the amount of some rupees 171-12-0, was plundered and carried off. The prosecutor was severely wounded by one of the dacoits on the head at the time of the dacoity. After the dacoits had broken open the boxes and chests, and when they were going off, the prosecutor's son and others seized one of the dacoits, Shadhoo Gowalah, prisoner No. 7, and kept him prisoner. He immediately told his captors that the dacoits had been induced to commit the dacoity at the instigation of two of the residents of the village, in which it occurred; and in the morning, when all the villagers were collected, he

* The names of other prisoners connected with this case, viz., of Nos. 12, 14, 17, 19 and 20, are not inserted here, because they were acquitted by the lower court.

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pointed out Assanoollah, prisoner No. 8, and Gholam Ghouse, No. 9, as the informants of the probable large amount of property to be found in the house of the prosecutor, and as the instigators of the plot, and these men, when questioned, admitted that they were concerned, and named Rajib Harree, prisoner No. 10, as the person who collected the dacoits. He allowed that he had assisted in the dacoity, and named prisoners Nos. 11 and 13 as having accompanied the party, and prisoners Nos. 15, 18, 19, 22, 24 and 25 were apprehended from the confession of prisoner No. 13. All these men also confessed before the police, and prisoner No. 16 was named as one of the dacoits.

"All the prisoners confessed before the darogah and implicated more or less each other. They all admitted that they assisted in the dacoity, and prisoners Nos. 11, 13, 15, 16, 21, 22, 23, 24 and 25, after their apprehension, pointed out different portions of the plundered property which had been made over to them as part of the spoil, and which they had concealed. The different confessions of the prisoners before the darogah in the Mofussil tally in all the main points, as well as the statements made before the magistrate, by prisoners Nos. 7, 8, 10, 15, 18 and 23, and the finding of the portions of the plundered property in the possession of some of them, as indicated in their confessions, greatly strengthens the general faithfulness of their statements. The Mofussil and foujdaree confessions were all properly attested and sworn to in my court, and the searching of the prisoners' houses and premises by the police, and the finding therein the stolen property, were regularly conducted, and all the facts connected with these transactions were sworn to clearly in my court. There were witnesses, moreover, to prove that prisoners from Nos. 13 to 25 were absent from their houses on the night of the dacoity. Prisoner No. 22, Puran Harree, is an old offender, and was convicted in June 1836 of highway-robbery, and imprisoned for three (3) years with labor in irons, and prisoner No. 25, Kangal Rae, was imprisoned in April 1841, for cattle theft for one (1) year. Panchoo Bagdee, prisoner No. 23, suffered imprisonment for six (6) months from May 1842 for theft of grain.

"The defence of the prisoners is weak and unsupported by evidence, and can in no way affect the apparent truth and faithfulness of the evidence for the prosecution.

"Prisoner No. 7, who was seized and made prisoner at the time of the dacoity, says that he had come to the village of Arna, where the dacoity occurred, for the purpose of purchasing cows, and that he was sleeping at the door of the prosecutor's house, and was seized and imprisoned as one of the dacoits; but this allegation is entirely uncorroborated, though witnesses were called to prove it. Prisoners Nos. 8 and 9 called witnesses to

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prove an *alibi*, in which they fail. Prisoners Nos. 10, 11 and 13 say that they were at home. Prisoner No. 15 admits he was absent from his house during the night of the dacoity. Prisoner No. 16, Abdoo Sheikh, says that the clothes found in his house are his property, and named witnesses to prove it, who declare they know nothing of the property belonging to him. Prisoner No. 18 denies his confessions. Manick Bagdee, No. 21, pleads an *alibi*, but fails to prove it. Prisoners Nos. 22, 23, 24 and 25 call witnesses to character, and to speak to their being at home on the night of the dacoity, but the witnesses declare that they are unable to speak to the latter fact.

"None of the witnesses for the defence corroborate in any material point the different pleas set up by the prisoners.

"I convict Debee Bagdee, No. 11, Sunniasee Bagdee, No. 13, Puresh Harree, No. 24, all of whom are chowkeedars, of dacoity with wounding, and sentence them to imprisonment, with labor in irons, for ten (10) years, and Puran Harree, No. 22, who was formerly convicted of highway-robbery, I convict of the crime of dacoity with wounding, and sentence him also to ten (10) years; and I convict prisoners Nos. 7, 8, 9, 10, 15, 16, 18, 21, 23 and 25 of dacoity with wounding, and sentence them all to be imprisoned, with labor in irons, for eight (8) years in the zillah jail."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I confirmed the conviction both against those who appealed and those who had not appealed on the 23rd of February. I have again considered the pleas set forth by the present appellants, and see no reason to interfere with the sentence passed on them."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

SURROOP CHURN

versus

SEEDHOO GHURRYE (No. 1) AND DHONOO MANJEE (No. 2).

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Case of SEEDHOO GHURRYE and another.

Conviction and sentence passed by the sessions, confirmed in a case of highway-robbery, on appeal.

CRIME CHARGED.—Highway-robbery in having forcibly robbed the prosecutor on the road of rupees 8-11-0, in ready money; and 2nd count, knowingly retaining in their possession property acquired by the above highway-robbery.

CRIME ESTABLISHED.—Highway-robbery.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 22nd October 1851.

Remarks by the sessions judge.—"The prisoners plead 'not guilty.' The prosecutor deposes, that on the evening of the 23rd September, he set out from his home to proceed to Buxshee Bazaar, to purchase some *pawn*. After proceeding about a mile, and in the act of crossing a brook, he was suddenly attacked by two men, who pushed a cloth into his face, and violently took from him a purse containing rupees 8-11-0, in money, and a piece of cloth, and ran away. The prosecutor then returned home, and on his way mentioned what occurred to several persons whom he met. It is in evidence, that on the afternoon of the date above stated, the prisoners were seen loitering about the spot where the robbery was committed, with sticks in their hands, and suspicion falling on them, they were arrested by the darogah, to whom they confessed they had robbed the prosecutor, and produced from their houses the money they had taken from him. The prisoners repeated their confessions before the magistrate, and as they are fully corroborated by the witnesses for the prosecution, I see no reason to doubt the truth of them. The prisoners make no defence in this court except as to character, which (according to the evidence) previous to the crime, with which they are now charged, was respectable. The assessors gave a verdict of guilty against both prisoners. I concur, and convict them of highway-robbery, and sentence them, as the crime was not attended with very aggravated circumstances, to seven (7) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—"The prisoners have appealed and rest their defence on allegations which they did not even urge at the trial. They

are to the effect, that the prisoners were in company with one Rama, and met the prosecutor; that Rama and the prosecutor abused each other; that they afterwards quarrelled with Rama, and Rama conspired with the prosecutor to charge them falsely with robbery; a plea, so incredible as it is in itself, cannot of course, be now entertained. I see no reason to doubt the propriety of the conviction of the prisoners, and confirm the sentence passed on them by the sessions judge."

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Case of SREDHOO GHURRYE and another.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

LALLJEE DYMUL (No. 1), KHOMANY SINGH (No. 2), THAKOOR DASS (No. 3), ADHAR SINGH (No. 4), KHOSHAL KACHY (No. 5), NUNDRAM AHEER (No. 6), TREEMUL SINGH (No. 7), MACOO KACHY (No. 8), TREEMUL THAKOOR (No, 9), DANYO SINGH (No. 10), BOHUR GOALAH (No. 11), BUKHSHO BANEA (No. 12), MOTEE LODHA (No. 13). BOYRUN BRAHMIN (No. 14), BHEKA KOORMEE (No. 15), KEDDAH BRAHMIN (No. 16), BULLORAM BAGRY (No, 17), DEO CHAND DOSAUD (No. 18), HOOLASSY THAKOOR (No. 19), JODHA THAKOOR (No. 20), TOOLSEERAM BAWORY (No. 21), CHONEY BRAHMIN (No. 22), SHORA SINGH (No. 23), MOHUB AHEER (No. 24), RUMMAH CHUMAR (No. 25) AND DOL AHEER (No. 26).

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Two prisoners convicted, the one of endeavouring to take the life of the jailor of the Allipore jail, by strangulation, the other of having inflicted repeated and most severe blows with intent to murder the said jailor, in the execution of his duty on occasion of a general rise amongst the life-prisoners in the jail, sentenced to death, under the provisions of Section I., Act XVIII. of 1845.

The remaining prisoners were convicted of aiding and abetting in the above crime, and sentenced to transportation for life.

CRIME CHARGED.—1st count, Nos. 1 to 26, having on the 16th January 1852, been principals and accomplices in a riot attended with the severe wounding of the magistrate, the jailor and several of the jail guards, and with having joined in such riot with the intention of causing death, and with the knowledge that they were likely to cause death; Nos. 1 and 2, 2nd count, having assaulted Mr. Floyd, the jailor, by seizing him by the throat with the intention of thereby causing his death, and with the knowledge that they were likely thereby to cause his death; 3rd count, No. 2, having assaulted Mr. Floyd, the

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jailor, by repeatedly striking him on the head and body with a bamboo, with the intention of thereby causing his death, and with the knowledge that he was likely thereby to cause his death; 4th count, Nos. 3 and 4, aiding and abetting Nos. 1 and 2, in the crime charged in count 2nd.

Committing Officer. Mr. E. Jackson, joint magistrate of 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge, on the 16th February 1852.

Remarks by the sessions judge.—"The prisoners denied the charges on which they were arraigned.

"It appears that a retrenchment of half a pice, at the suggestion of the superintendent, under the sanction of Government, had been made in the money allowance of the life-prisoners in the Allipore jail, which caused considerable dissatisfaction: the majority of the prisoners were induced to submit to the order, the dissatisfaction continuing amongst some refractory prisoners in ward No. 2.

"John Floyd, the jailor, deposed, that on the morning of the 16th January last, he went to the yard attached to No. 2 ward, accompanied by two European overseers, Messrs. Thompson and Baddely, and the civil and military guard, who were armed with sticks. The ward No. 2, containing upwards of 170 refractory prisoners, forty-four of whom were gunny bag weavers and the rest rope-spinners. The weavers were separated and were being escorted to No. 10 ward, four convicts being left in No. 2 ward, (of whom one was witness No. 18, Puhoop Singh) to distribute the raw material for spinning to the rope-spinners. Before Mr. Floyd reached No. 10 ward, a cry was raised that the refractory prisoners in ward No. 2 were murdering Puhoop Singh. Mr. Floyd hastened to the spot, and on inquiring who had assaulted "Puhoop Singh," one of the refractory prisoners, (who Mr. Floyd was told was Lalljee, prisoner No. 1), got up and seized him (Floyd) by the throat, the fingers of his right hand being so firmly fixed, that he was almost choked. Mr. Floyd fell and was carried out by the guards insensible, the rest of the prisoners attacking them with sticks. Information was sent to Mr. Samuells, the magistrate, who arrived and proceeded with Mr. Floyd to the ward No. 2, desiring the party who had assaulted him to be removed. At this time, the guard and the prisoners began to assault each other. One prisoner, No. 13, "Motee," seizing a stick belonging to Jumeer Khalasee, and Thakoor Dass, prisoner No. 3, getting up with a bamboo, the rest of the prisoners following his example, about one hundred and thirty-three in number, and assaulting Mr. Floyd and the magistrate before they could make any arrangement for their defence. Mr. Samuells fell, a drain being behind him, which he did not see, and was carried

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out by the guards with a cut on his forehead. Mr. Samuells fired, but whether before or after he fell, Mr. Floyd does not know. Mr. Floyd was left at this time in the yard, and the convicts continued beating him; one prisoner, Khomany Singh, No. 2, beating him unmercifully on the head, back and arm, the blow on the head brought him to the ground, and he was carried out insensible; his left leg, head and fingers of the left hand being very much injured. It appeared from Mr. Floyd's evidence, that some of the guard fired at the convicts, of whom three were killed and two wounded, including Thakoor Dass, No. 3.

"Mr. Samuells, the magistrate of the 24-Pergunnahs, deposed to the fact of a reduction having been made in the money allowance of the life-prisoners at his suggestion and under the sanction of Government, which excited great dissatisfaction amongst the prisoners; that on the 14th January, he went round the ward of the jail and addressed the prisoners, pointing out to them the imperative nature of the order and the folly of resistance, which had the effect of inducing the majority of the prisoners to submit; a few, especially in ward No. 2, still holding out; that on the 15th, it was reported to him that about a hundred and fifty still held out, upon which orders were given to separate them and permit no communication with the other prisoners; that on the morning of the 16th January, he received a message from the jail to say that there was a disturbance amongst the prisoners, and that Mr. Floyd had been maltreated; that he (Mr. Samuells,) immediately proceeded to the jail taking with him a pistol which had been previously loaded, and dispatching a message for Captain Raleigh; that he proceeded with Mr. Floyd and the overseers Baddely and Thompson and a considerable number of sepoys, khalassees and burkundauzes, some with batons and some without, to ward No. 2, where he learnt Mr. Floyd had been assaulted. The prisoners were apparently quiet, some engaged in work, others sitting, wrapped up in their blankets; that on walking up the yard, he desired Mr. Floyd to point out who had assaulted him and on turning aside to speak to ten prisoners, who were seated in a row at the corner of the first working shed, he heard a noise, and on turning, saw that the sepoys and khalassees had seized a prisoner behind one of the pillars of the shed, and were beating him with their batons, exclaiming that he was one of the men; that he (Mr. Samuells,) interfered to put a stop to the beating, when another party seized on some more men in another part of the shed and a great uproar ensued; that at this time, the great mass of the prisoners in that yard rose, and wrenching the bamboos used in the rope manufacture out of the earth, rushed upon them; that the greater part of the men with Mr. Samuells immediately ran, about ten

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or twelve of the sepoys standing firm; that on retreating towards the door of the ward, he (Mr. Samuells,) drew his pistol and fired three times at different men, who attacked him, the third shot being fired at a man named Thakoor Dass, whose arm was broken as he afterwards ascertained by the ball; that almost immediately after this, he (Mr. Samuells,) put his foot into a drain and fell, upon which the prisoners, who had been checked by the fire of the pistol, rushed upon them, and in the confusion which ensued, he received a blow from a bamboo on the forehead, of which he still bears the mark, and which completely stunned him; that he was carried out to the gateway, and on coming to himself, the first thing he heard was firing in the direction of the ward; that he endeavoured to rise to put a stop to it, but Dr. Webb, who arrived at that moment, would not allow him to move, and ran in himself to convey the order; that on going in shortly afterwards, he found the prisoners were escaping over the side walls of the yard, and on proceeding with Captain Raleigh and the sepoys to wards Nos. 1, 2 and 3, they took out all the prisoners who had been confined in ward No. 2, where the disturbance occurred, amongst whom were the prisoners present. Thakoor Dass prisoner No. 3, being apprehended in ward No. 1, where he had concealed himself, and he was immediately recognized as the man he (Mr. Samuells,) had last fired at, being one of the foremost of those who attacked them, and was laying about him right and left with a large bamboo when he was fired at.

"James Baddely deposed to his accompanying the jailor Mr. Floyd to the jail, on the 16th January last; to the riot which occurred in the first instance; to the arrival of Mr. Samuells; to the subsequent attack of the prisoners in which a prisoner, No. 2, Khomany Singh, aimed a blow at his (Baddely's) head, which struck him across the left shoulder; to the blow being repeated, which missed him; to the fact of Mr. Samuells and Mr. Floyd being insensible, and the native doctor doing something to the forehead of the former; to his hearing firing and being sent by Mr. Samuells to stop it; to Mr. Samuells' subsequently going in with the Militia, and taking out the convicts in ward No. 2 and confining them in another ward.

"W. Thompson deposed to the fact of the riot in the first instance, on the morning of the 16th January last, and one of the prisoners seizing Mr. Floyd by the throat, and two other prisoners coming up to his assistance; to the fact of Mr. Floyd's being carried out, and the prisoners following them with bamboos: some sepoys and a few khalassees and jemadars being wounded; to the arrival of Mr. Samuells, and subsequent attack on the part of the prisoners; to his hearing the report of a pistol, and seeing some of the prisoners assaulting the guard; to his hearing the sepoys firing at the prisoners, some of whom, after-

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wards went through the drain and over the wall into wards Nos. 1 and 3.

"Puhoop Singh, prisoner, witness No. 18, deposed to the riot in the jail, in the first instance, on the 16th January last, in ward No. 2, where he was appointed by the jailor to distribute work to the prisoners; to the fact of prisoner No. 1, Lalljee, and Khoshal, No. 5, having previously beaten him by the order of Thakoor Dass, No. 3, and Choney Lall, No. 22, prisoners Nundram, No. 6, and Hoolassy, No. 19, and Dol Aheer, No. 26, assisting them; he alluded to the dissatisfaction of the prisoners at the reduction of the money, and to his having been threatened three or four days before by the prisoners if he ventured to receive his reduced allowance.

"Witness No. 5 Bhugwan Singh, witness No. 6 Goohee Khan, witness No. 10 Zumeer Khalasee, witness No. 14 Mahomed Alee, witness No. 15 Ramphul Singh, sepoy, and witness No. 17, Chuhowree Singh sepoy, appear to have been more actively concerned in rescuing Mr. Samuells and Mr. Floyd, the jailor, whose lives, but for their exertions, would, in all probability, have fallen a sacrifice to the violence exhibited by the prisoners.

"All the prisoners from Nos. 1 to 26 inclusive, were proved to have been concerned in the riot indicated in the first count, they were apprehended and shut up in a separate ward with other prisoners immediately after the riot, and were selected and recognized by the guard as the guilty party.

"Upon the evidence of Mr. Thompson No. 4, Ramsahai Singh No. 7, Zumeer Khalassee No. 10, Ewaz Khan No. 13, and Gassy Doss, convict No. 19, prisoner Lalljee No. 1, is more particularly guilty on the 2nd count.

"On the evidence of Mr. Floyd, the jailor, Ahmud Bux No. 8, Zumeer Khalassee No. 10, prisoner No. 2, Khomany Singh, is guilty on the 3rd count.

"On the evidence of Mr. Samuells, Mr. Floyd, the jailor, Bugram Singh witness No. 8, Zumeer Khalassee No. 10, Ewaz Khan No. 13, Thakoor Dass, prisoner No. 3, is proved to have attacked Mr. Samuells, and wounded him severely on the forehead: witness No. 6 Goohee Khan, seeing this prisoner with a bamboo in his hand. Witness No. 14, Mahomed Alee, seeing him fall down wounded with a bamboo in his hand, and No. 11 Gooroo Bux, jemadar, finding him wounded. The bamboos used by the prisoners were most formidable weapons, weighing more than a seer, about five or six feet long and two inches broad.

"From the evidence of Dr. Strong, it appeared that the magistrate received a deep lacerated wound over the eye, which had been already dressed by the native doctor on the arrival of Dr. Strong; that this wound must have been occasioned by

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some hard substance, like the bamboos produced in court, and although the wound was not of itself dangerous, yet the fall the magistrate met with was likely to have produced serious illness, and both Dr. Strong and Dr. Webb, seriously impressed upon his mind the necessity of his remaining quite quiet. It appeared also that Mr. Floyd, the jailor, was bruised in every part of his body, and at one time his life was considered endangered; he was so shaken that, according to Dr. Strong, both he and Dr. Webb, apprehended the possibility of his becoming demented, and although he was considered out of danger yet if he ventured to move about at all, it was thought he would endanger his leg, his lance joint having been very seriously injured, and Dr. Strong considered it would be a long time before he effectually recovered: it appeared further from this evidence that three prisoners were shot dead in the riot alluded to, and the leg of one man was amputated, and another man whose arm was shot was dressed.

"It is difficult to ascertain by whose orders the firing on the convicts took place, Mr. Samuells distinctly denying having given any order; on the contrary it is proved that, on his recovering his senses, his first object was to stop the firing. I quite concur, however, with that gentleman that had he been in his senses, he would have been justified, under the circumstances, in giving orders to the sepoys to fire upon the convicts if opposed.

"Prisoner No. 1 Lalljee, declared he was beaten by the orders of the jailor Mr. Floyd; prisoner No. 2 Khomany Singh, complained of the reduction of the money allowance and the oppressive conduct of the jailor; prisoner No. 3 Thakoor Dass, complained of the oppression of the jailor and of three or four fellow prisoners who were spies on the part of Mr. Floyd; prisoner No. 4 Adhar Singh, prisoner No. 5 Khoshal Kachy, prisoner No. 6 Nundram Aheer, prisoner No. 7 Treemul Singh, prisoner No. 8 Macoo Kachy, prisoner No. 9 Treemul Thakoor, prisoner No. 12 Bukhsho Banea, prisoner No. 13 Motee Lodha, prisoner No. 14 Boyrun Brahmin, prisoner No. 15 Bheka Koorme, prisoner No. 17 Bulloram Bagry, prisoner No. 18 Deo Chand Dosaud, prisoner No. 19 Hoolassy Thakoor, prisoner No. 20 Jodha Thakoor, prisoner No. 22 Choney Brahmin, prisoner No. 25 Rummah Chumar and prisoner No. 26 Dol Aheer, made the same objections as prisoner No. 3, Thakoor Dass. The objections of prisoner No. 10 Danyo Singh, and prisoner No. 11, Bohur Goalah, were made to the same purport; prisoner No. 16, Keldah Brahmin, urged no objections; prisoner No. 23, Shora Singh, declared he had been ten years in jail and never had a quarrel with any one; prisoner No. 24, Mohub Aheer, cited the jailor, Mr. Floyd, to prove that he was in ward No. 4; Mr. Floyd, however, distinctly states that this prisoner was in No. 2 ward during the riot, and that he was given to understand that

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when the sepoys were firing at the prisoners, he jumped over the wall and got into ward No. 3, and then into the court-yard where he was apprehended; some of the prisoners presented a petition containing complaints to the same purport as mentioned in their replies.

"The jury considered the first count proved against all the prisoners inclusive, from Nos. 1 to 26, the 2nd count, proved against prisoner No. 1 Lalljee, and prisoner No. 2 Khomany Singh. The 3rd count proved against prisoner No. 2 Khomany Singh and the 4th count, proved against prisoner No. 3 Thakoor Dass. I concurred with the jury, except as regards prisoner No. 2 Khomany Singh on the 2nd count, and prisoner No. 3 Thakoor Dass, on the 4th count, against whom sufficient evidence was not adduced on those counts.

"Although from the evidence of the magistrate, Mr. Samuells, it would appear that the guard beat the prisoners, and from the evidence of Mr. Floyd, the jailor, the guard and prisoners assaulted each other, it is quite clear that the riot commenced upon the part of the prisoners, by their beating a fellow prisoner Puhoop Singh, and it was to find out his assailants that the guard interfered. Whatever may have been the origin of the riot, the attack of the prisoners upon the magistrate and Mr. Floyd was most unjustifiable, and considering the prominent part borne in the riot by prisoner No. 1 Lalljee, prisoner No. 2 Khomany Singh and prisoner No. 3 Thakoor Dass, and the imminent danger to which the lives of the magistrate and Mr. Floyd were exposed, I am of opinion that these three prisoners have rendered themselves liable to a capital punishment, under Section I. Act XVIII. of 1845, and recommend that they be sentenced accordingly.

"I would recommend that the other prisoners No. 4 Adhar Singh, No. 5 Khoshal Kachy, No. 6 Nundram Aheer, No. 7 Treemul Singh, No. 8 Macoo Kachy, No. 9 Treemul Thakoor, No. 10 Danyo Singh, No. 11 Bohur Goalah, No. 12 Bukhsho Banea, No. 13 Motee Lodah, No. 14 Boyrun Brahmin, No. 15 Bheka Koormee, No. 16 Keddah Brahmin, No. 17 Bulloram Bagry, No. 18 Deo Chand Dosaud, No. 19 Hoolassy Thakoor, No. 20 Jodha Thakoor, No. 21 Toolseeram Bawory, No. 22 Choney Brahmin, No. 23 Shora Singh, No. 24 Mohub Aheer, No. 25 Rummah Chumar and No. 26 Dol Aheer, under the above Section and Act, be sentenced to transportation beyond sea for life."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. A. J. M. Mills.)—"It appears from the record that the retrenchment of half a pice from the daily allowance of the life-convicts, had excited great and general dissatisfaction amongst them. The more refractory, about 170 in number,

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had been separated from the rest, and locked up in ward No. 2, the scene of the assaults committed by these prisoners, on the morning of the 16th January last, upon the officers of the jail. There were two distinct assaults, which we notice separately.

"It is in evidence that Mr. Floyd opened the ward No. 2, between 6 and 7 A. M., and having selected 44 weavers was proceeding with them to ward No. 10, when a cry was raised that the witness Puhoop Singh was being murdered in ward No. 2. Mr. Floyd, attended by Messrs. Thompson and Baddely and the guard, hastened back, and went to the working sheds to pick out the man who assaulted Puhoop Singh, when Lalljee, prisoner No. 1, sprung upon him from behind, and grasped his throat with the fingers of both hands in a manner so as to deprive him of his breath and his senses. The guard rescued Mr. Floyd, and bore him out of the ward in an insensible state, followed by the body of the prisoners armed with bamboos, who wounded one sepoy and some khalassees.

"The evidence to Lalljee, though he was not identified at the time by Mr. Floyd, as the person who attacked him, is clear and convincing. He is recognized by Mr. Thompson, and four native witnesses.

"Mr. Floyd was the person most obnoxious to the convicts. He believes that the witness, Puhoop Singh, was assaulted for the purpose of bringing him into the ward, and he swears that the attack was premeditated, and was made with the intent to take away his life.

"A man's motives are to be inferred from his acts. Mr. Floyd was in the execution of his duty, and had done nothing to provoke the prisoner Lalljee. We are of opinion that the manner in which the prisoner suddenly sprung upon Mr. Floyd from behind, and fastened the fingers of both hands on his throat, the thumbs being fixed behind so as to give greater force to the pressure, evinced a malicious and wilful intention to murder him. The prisoner did not relinquish his hold of Mr. Floyd, whom he had thrown down, and we have no doubt, that but for the timely interposition of the guard, and the circumstance of Mr. Floyd's cravat preventing the fingers of the prisoner's left hand having the same effect as those of the right hand, he would have completed his murderous purpose. We are of opinion that the second count of the charge, *viz.*, assaulting Mr. Floyd with the intention of causing his death, is fully established against this prisoner.

"It is further in proof that the prisoners Khomany Singh and Thakoor Dass came to Lalljee's assistance, and Mr. Thompson deposes to having struck the latter on the head with a stick, but the evidence of the witnesses is contradictory as regards the

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actual part taken by these prisoners in the assault. Some depose to Khomany Singh and Thakoor Dass also seizing Floyd by the throat, and others to their striking him.

"The second attack took place about a quarter of an hour or twenty minutes after the first, when Mr. Samuells, informed of the outrage, came to the jail. Mr. Samuells, observing the quiet demeanor of the prisoners, entered the ward; he was armed with a pistol, and was attended by Messrs. Floyd, Thompson and Baddely, and the guard of sepoys and khalassees, who carried only their batons. The immediate origin of the riot which ensued is attributed to the prisoner Motee seizing one of the khalassees' batons, on which the khalassees and sepoys assaulted the prisoners in the first working shed. Simultaneously with this movement, the great body of the prisoners came from the corner of the second and third working sheds, where they had congregated, and rushed upon Mr. Samuells and his party. But it is of little moment whether the sepoys or the prisoners commenced the attack one upon the other, as we entertain no doubt that the prisoners were bent on violence. The prisoners had before nearly murdered Mr. Floyd, and driven the sepoys out of the ward: there had been time for passion to subside, but the success which had attended their first attack, again encouraged them to rise, and arming themselves with deadly weapons, clubs of five feet in length, and two pounds in weight, they committed acts, which they must have well known were likely to cause death. Entertaining this view of the general design of the rioters, we proceed to notice the evidence which bears upon them individually as regards the second attack.

"It is established, by the evidence of Mr. Floyd and that of three other witnesses, that the prisoner Khomany Singh, knocked down Mr. Floyd, who had gone to Mr. Samuells' assistance, and when down continued his murderous attack upon him, striking him several times over the head, back and shoulders with a heavy bamboo, with the intent, as Mr. Floyd believes, and which we think is fairly inferrible from the prisoner's acts, as well as from the severe injuries which Mr. Floyd (as it appears from the evidence of Dr. Strong,) received, to take his life. It is also established that he, Khomany Singh, assaulted Mr. Baddely, aiming a blow at his head, which fortunately alighted on his shoulder, and also made a second blow at him, which missed him; and further, that he took a conspicuous part in the first attack upon Mr. Floyd. Upon the above grounds we are of opinion that the third count of the charge, assaulting Mr. Floyd with a club with the intent to murder him, is fully proved against the prisoner.

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"The prisoner No. 3, Thakoor Dass, was one of the foremost leaders in the attack upon Mr. Samuells, but the evidence of the witnesses who depose that he was the person who struck down Mr. Samuells cannot be relied on, and is directly opposed to Mr. Samuells' own deposition, in which he distinctly states, that he shot him before he fell, and that he received the blow *after he had stepped into the drain* and *fell*. Moreover some of the witnesses state that the prisoner on being wounded in the *right* arm (as it appears from the record) dropped his club, a circumstance which is strongly against the probability that he, the prisoner, was the person who inflicted the blow after Mr. Samuells' fall. There is, therefore, no overt act of assault upon Mr. Samuells personally, established against this prisoner, as against the prisoners Nos. 1 and 2 with respect to Mr. Floyd; no doubt, however, can be entertained of his participation both in the first and second attacks.

"The fact of the remaining prisoners, Nos. 3 to 26 inclusive, being present and aiding and abetting in the second attack upon Mr. Samuells and his party, is clearly established by several witnesses, amongst whom are the sepoys, jemadars, and other officers of the establishment.

"The attack was of the most determined and desperate nature, and might have ended in the most serious results, indeed, at the present time, Mr. Floyd is suffering from the violent treatment he received. We are of opinion that in order to uphold authority, and to prevent the recurrence of such outrages, it is our duty to enforce the provision of the law, Act XVIII. of 1845, which enacts 'that any convict sentenced to imprisonment 'for life or transportation for life, who does any act with the 'intention of thereby causing, or with the knowledge that he or 'she is likely thereby to cause the death of any person shall, 'upon conviction thereof before the sessions court, subject to 'confirmation by the Sudder Court, be punished with death, or 'with transportation for life, or with corporal punishment not 'exceeding thirty-nine stripes, whether such convict does or does 'not by such act, cause the death of any person.' The prisoners before us are convicts for life, not subject to transportation, under the sentences already passed upon them.

"It only remains for us to determine the punishment to be awarded on the several prisoners before the court. We convict Lalljee and Khomany Singh of assaulting Mr. Floyd in the execution of his duty, with the intent to cause his death, and sentence them to suffer the extreme penalty of the law. The remaining prisoners, Nos. 3 to 26 inclusive, we convict of aiding and abetting in the attack on Mr. Samuells and his officers, severely wounding them, and of having joined in such attack with the

intent of causing death, or with the knowledge that they were likely to cause death. But we think that the law will be vindicated and the ends of justice satisfied by the capital punishment of the two most active principals. We, therefore, sentence the prisoners Nos. 3 to 26 inclusive, to transportation for life."

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PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

CHUBBEELAL MANJEE (No. 2), RAM RAJBUNSEE (No. 3), MOHUNNUD RAJBUNSEE (No. 4), DOORGARAM RAJBUNSEE (No. 5), PEEROO KHAN (No. 6), JEWUN RAJBUNSEE (No. 7), GOSSAIN DOSS (No. 8), DEBEE RAJBUNSEE (No. 9), GOLUCK ROY (No. 10), NUBKISSORE ALIAS KISSORE RAJBUNSEE (No. 11) AND HOOKUM CHAND KYBURT (No. 12).

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The evidence of eye-witnesses in cases of dacoity to recognition is always untrustworthy, and cannot be relied on for a conviction, when the witnesses have not been consistent in their depositions at the several stages of inquiry.

CRIME CHARGED.—Nos. 2 to 12, 1st count, dacoity with murder of Jhaboo Saha; 2nd count, maltreatment of Debee Saha, and Nos. 2 to 5, 3rd count, receiving and having in their possession property obtained by dacoity, knowing it to be such.

Committing Officer, Mr. E. E. Woodcock, joint magistrate of Maldah, Dinagepore.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 15th of January 1852.

Remarks by the sessions judge.—"On the 31st of October 1851, or 15th Kartick 1258, some thirty dacoits attacked the house of Jhaboo Saha, beat and tortured him and his son-in-law, Debee Saha, and carried off property, principally ornaments and clothes, valued at rupees 206-7-0. Jhaboo Saha died very shortly after, having barely had strength to name the prisoners Chubbeelal (No. 2), and Nubkissore (No. 11), as his torturers, to his neighbour Gourhurree (witness No. 2), who was the first to enter the house after the departure of the dacoits. When his son-in-law Debee Saha and the other eye-witnesses came in, they found that he was dead. Jhaboo Saha was an old man, of about seventy, by caste and profession a Telee, but was reported to be rich. The village was a large one, but inhabited principally by fishermen, who generally remain on board their boats at night, so that only three neighbours accompanied the chowkeedar to the house after the dacoits had attacked it. The chowkeedar Bhickoo and one of his companions, Doorgaram Authpohury (witness No. 3), recognized several of the dacoits. The only other eye-witnesses are Gourhurree, the next door neighbour,

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in whose house the Telee's women took refuge, and the son-in-law Debee Saha (witness No. 4), who, after having been beaten and tortured, escaped and concealed himself in the jungle. I see no reason to doubt the evidence of the eye-witnesses though that of Debee Saha (No. 4), in the Mofussil and foujdaree does not tally with what he gave before me. He attributes the discrepancies as to names to having been confused from the scene he had witnessed and the torture he had endured, which certainly was likely to have that effect. The chowkeedar also pleads confusion of ideas in explanation of his having stated in the first instance at the thanna that none of the dacoits had been recognized; but I attribute this more to its being usual not to mention names until the arrival of the police in order to prevent alarm. The questions put by the prisoners to the eye-witnesses show that there was no plausible ground for their being falsely charged, and the slight discrepancies in the evidence as to the places of some of the dacoits during their retreat are accounted for by the different positions in which the witnesses were. It also appears that the evidence of the chowkeedar was recorded after some of the dacoits had been apprehended, which was a great mistake on the part of the darogah; but it is clear from the circumstances and the chowkeedar's explanation that he had named them to the darogah, and that there was at the time no other ground for their being apprehended. Plundered property valued at rupees 74-15, was found in the houses of four of the prisoners, but by far the greater portion in that of the prisoner Chubbeelal (No. 2,) including ornaments, silk and other cloth, (some of which was stained all over with oil) not likely to be found in the house of a Rajbunsee.

"In the foujdaree he stated that part of this property was his own, and that part had been maliciously placed in his house by the chowkeedar Bhickoo, while before me he claimed the whole as his own, attributing his foujdaree story to his having been at the time ill with fever. The prisoner Nubkissore (No. 11,) has a mark of burning on his arm, which he states in his defence to have been caused by a lamp falling on it while he was reclining, but Debee Saha (witness No. 4,) states distinctly that it was caused by some of the burning oil from the *mussaul* falling on the prisoner's own arm, while he was applying it to the deceased, and it is evident from the darogah's report that there was a fresh sore, caused by a burn, on the prisoner's arm immediately after the dacoity. The evidence of Debee Saha (No. 4,) is as satisfactory and clear as could possibly be looked for under the circumstances, in respect to the dacoits having seized and tortured the deceased; the witness having remained for some time concealed, his having subsequently been seized and tortured, and his escape, with a detail of the result of each application of torture. I consider all

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the prisoners guilty of dacoity with murder, and that Chubbeelal (No. 2) and Nubkissore (No. 11,) were the ring-leaders in the torture and murder. I therefore recommend that they be sentenced to suffer death, and that the other prisoners be sentenced to imprisonment for life in transportation beyond sea."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The attack of a gang of thirty armed dacoits in the dead of the night, must strike such terror in the minds of the inmates and neighbours of the house attacked that they can scarcely be expected to retain the power of distinguishing persons among the dacoits, even if known to the parties robbed, and their neighbours, which is rare. For this reason the evidence of eye-witnesses to recognition at the time of committing the crime, is the most untrustworthy that can be placed before a court in cases of dacoity, and should be received with the greatest caution, even when the witnesses have been consistent in their information from first to last, and it was given under circumstances the least open to suspicion. The proof in this case rests almost entirely upon the evidence of four eye-witnesses. Against the first four prisoners, there is also the fact of some articles of property recognized by the deceased's son-in-law being found in their houses, and against Chubbeelal and Nubkissore the alleged dying declaration (oral) of the deceased. I will proceed to review these proofs *seriatim*. First, as to the recognition, it is observable that three out of four witnesses have pretended, at some stage of the inquiry, that they recognized from eight to thirteen dacoits out of the entire gang, estimated at thirty, and that they singularly coincide in recognizing, with some few exceptions, the same men. The first witness is Bhickoo, chowkeedar of the village. He gave the first information at the thanna, and in answer to the question, whether he recognized any of the dacoits, distinctly said that *he recognized none*. The question would naturally have led him to state that others had done so, if, as he subsequently stated, he was aware that the deceased's son-in-law had identified some of the culprits, but he did not intimate even this. The fact of his having himself recognized any one does not appear in any of the reports, until five days after the inquiry had commenced, *viz.*, 5th November, and his deposition to that effect, although dated November 2nd, was not sent in till the final report of the 9th November was submitted. In that he pretends to have recognized thirteen of the dacoits as they left the house robbed, and he has deposed to nearly the same effect before the magistrate and before the sessions judge, but he has not been consistent with regard to the individuals he says that he recognized. The reason allowed by the sessions judge for admitting this man's evidence as trustworthy, is by no means satisfactory. It is quite impossible to believe it.

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"The next witness, and the first in importance, is the son-in-law of the deceased. He deposed, on the arrival of the darogah, that while he was being tortured, he recognized six of the dacoits. The darogah arrested some of them and some others, on no *apparent* information, and then he deposed that he had recognized seven others. He has not been at all consistent in his subsequent depositions as to the recognition of these thirteen men. This is noticed by the sessions judge; nevertheless he believes his evidence to be true. I cannot. The evidence of Doorgaram is also inconsistent as to the persons he recognized, and that of Gourhurree, although more consistent in this respect, is the contrary in a most important point, *viz.*, as to the dying assertion of deceased. To the darogah he only mentioned that the deceased said that Chubbeelal had tortured him, while to the magistrate and sessions judge he relates in a circumstantial manner, that deceased said, that Kissore burnt him and Chubbeelal beat him. There is reason to doubt whether the deceased was alive when this witness went in, and that deceased ever named any one. From his deposition it would appear as if Debee Saha, the son-in-law of deceased, had returned to the house before he, (witness,) went there, and Debee Saha says, that when he returned his father-in-law was dead. The evidence on this point is, therefore, not to be depended on. There remains only to be noticed the property found. That obtained from the possession of all the prisoners except Chubbeelal, was found in their ordinary chests, unconcealed, and is of a nature which every Bengallee owns; that in Chubbeelal's house was found in some pillow cases, under somewhat suspicious circumstances, and is of a more valuable nature; but with regard to this also the conduct of Debee Saha is very suspicious. When he found that property had been discovered of a description which was not included in his list of articles plundered, he gave in another or supplementary list. His behaviour with regard to the recognition of the prisoners has been so loose and unscrupulous, that no reliance can be placed on his evidence. Not one of the numerous prisoners arrested in this case have confessed, and there is no evidence or information, except that above noticed, which, for reasons above stated, the court cannot act upon. All the prisoners are, therefore, acquitted. It is directed that they be released, and that the property found in their respective houses be restored to them."

PRESENT :

SIR R. BARLOW, BART., *Judge.*

A. J. M. MILLS, AND R. H. MYTTON, ESQRS., *Officiating Judges.*

HAGOO TURRUFDAR

versus

SHONARAM MUNDUL (No. 34), BHOLYE CHOWKEEDAR (No. 35), RAMKOOMAR HALDAR (No. 36), RAMJOY MUNDUL (No. 37) AND SHIBRAM MUNDUL (No. 38).

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The majority of the court holding that there was no evidence of premeditation, sentenced a prisoner convicted of wilful murder, to imprisonment in transportation for life.

CRIME CHARGED.—No. 34, wilful murder of Deedar Mahomed, the father of the prosecutor, on the night of the 29th July 1850, or 15th Srabun 1257, and Nos. 35, 36, 37 and 38, privity to the above crime after the fact.

Committing Officer, Mr. H. Rose, joint magistrate of Khoolna, Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 24th January 1852.

Remarks by the sessions judge.—" Moteeoolla Turrufdar on 3rd December 1851, petitioned the darogah of Noabad, that his brother, Deedar Mahomed, had intercourse with Panchee (widow) daughter of Tekoree Mundul, as had also Shonaram Mundul. One night, in Srabun, the preceding year, his brother went to the widow's, when Shonaram, Ramjoy, Shibram, and Lukhun, seized him and killed him. Bholye Chowkeedar in his rounds, discovering this, called villagers, Ramcoomar Haldar, Sree Thakoor, Chand Thakoor, Chedam Pal, Nowkuree Pal and others. Hagoo Turrufdar (son of deceased) and Hossein Turrufdar (son of another brother of petitioner) were frightened into concealing the crime and burying the corpse. Therefore, and for fear of zemindar's agents, they buried the body. Petitioner was absent at Goberdangah at the time; heard of this after his return home, and therefore begged the darogah to inquire. The darogah wrote for instructions, as the crime appeared to have been perpetrated so long ago. On 21st December he reported that he had accompanied the joint magistrate to various places on duty; that the mohurir was at the sudder station giving evidence in another case, and the jemadar was employed about a dacoity committed on a boat. After quitting the joint magistrate, the darogah inquired into other cases, and then, on 22nd December, took the deposition of the deceased's son. The darogah's delay is excessive, and I have directed the joint magistrate to take notice of it.

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" Hagoo Turrufdar (the son of the deceased) deposes, that on the night of 15th of Srabun before last, when he was sleeping, Taray Sheikh (son-in-law of Bholye Chowkeedar) called him, and took him to Nomodanga, where, at Panchee widow's, he saw the corpse of his father, Deedur Mahomed. Taray summoned neighbours, Nowkuree Pal, Sumbhoo, Sree Thakoor, Chand Thakoor, Ramkoomar and Shibram. Bholye Chowkeedar bound Shonaram; Jotye and Shukurie told them that Shonaram had throttled his father; Ramkoomar, Shibram and Bholye Chowkeedar consulted with villagers, and frightened him into burying the body, saying that the zemindar would punish him if he reported; therefore he, Jotye, Shukurie and Hossein, carried his father's remains home, and next morning prosecutor told Sekunder, Kanai and Shonaoolla, that his father died of disease, and they aided in the burial. He heard that his father had come to visit Panchee, and that her relative, Shonaram, also had illicit intercourse with her. Hence the murder.

" Panchee widow, witness No. 1, says that Deedar Mahomed's visits had been forbidden by Shonaram, who is her relative, and visited her (leaving Ramkoomar, Lukhun and Ramjoy outside) on 15th Srabun 1257, and when Deedar came, Shonaram rushed out and throttled him. Afterwards Shukurie and Jotye tied Shonaram's hands with string, and took him to the village chowkeedar. She went to Ramjoy's, where she saw Shonaram, Ramjoy and Shibram smoking. She seized Shibram's feet and asked what she was to do. Shibram said he would be answerable. Shonaram told Shibram in her presence that he had throttled Deedar.

" Shukurie and Jotye say that one night in Srabun 1257, on their rounds with Bholye Chowkeedar, they heard a noise at Panchee widow's, and by order of that chowkeedar ran and saw Deedar throttled by Shonaram, whom they seized. They called Bholye Chowkeedar, who tied Shonaram, and then they saw Deedar Mahomed was dead. They called Kangalee and Babooram, whom they left on guard, and took Shonaram off to the chowkeedar's house, who sent Taray (his son-in-law) to call villagers. Then they took Shonaram to the widow's, and saw Sreenath Thakoor, Chand Thakoor, Nowkuree Pal, Sumboo, Ramkoomar, Shibram and Ramjoy, there. The last three and Bholye Chowkeedar, told prosecutor and Hossein (son and nephew of the deceased) to bury the corpse, and they would be responsible for the prisoner. They also forbad them to tell any body. Hagoo, Jotye, Shukurie, and Hossein, carried the body to prosecutor's. Essur Chunder, Gomashta of the village, also warned them not to tell; therefore witnesses were afraid to report.

" Nowkurie deposes, that at the call of Taray he went to Panchee widow's, where, in the yard, he saw Deedar's corpse,

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and Shonaram bound, but Ramkoomar and Shibram took Shonaram from the chowkeedar. Hossein, Sumbhoo, Sreenauth and Chand Thakoor declare that Ramkoomar, Sheebram, and Ramjoy, directed them to conceal the murder. Hossein also saw his uncle's throat marked from pressure of fingers.

"Kanai, Sekundur and Shonaoollah, bear testimony to the burial one and half years ago, and that prosecutor told them the deceased died of *daod*. Sekundur adds that he afterwards heard that Shonaram had killed Deedar; but Essur Chunder Gomashta deterred him by threats from informing.

"Shonaram denies the charge, and asserts, but can give no proof, that Shukurie, Jotye and Deedar seized him at Panchee widow's. Jotye hit at him with a stick, but struck Deedar Mahomed, which caused death. Since then he has hid himself in Saragram.

"Ramkoomar and Bholye say prosecutor and Hossein desired them not to mention the murder, lest their caste should go, as the widow Panchee, (at whose house their relative died,) was a Chundal; but this is contrary to Bholye's previous confessions in the Mofussil and foujdaree, which corroborate what Jotye and Shukurie say. In the Mofussil Bholye said he saw marks on the deceased's throat, and Shonaram told him Deedar died from his seizing him.

"The law officer convicts Shonaram of wilful murder; but says *kissas* is barred owing to his not being an habitual strangler, but he is liable to *akoobut*. I consider that, under the circumstances, he is guilty of murder; but imprisonment for life would be a proper punishment for his crime, there not being full proof of premeditation. The other prisoners, Bholye, Ramkoomar, Ramjoy and Shibram, are convicted by the verdict of the law officer of privity after the fact, and declared subject to *tazeer*. I am of opinion that they are guilty of privity after the fact, and should be sentenced to seven (7) years' imprisonment, and pay a fine of rupees fifty (50) in lieu of labor within ten days."

Remarks by the Nizamut Adawlut.—(Present: Messrs. Mills, Mytton and Sir R. Barlow.)—MR. A. J. M. MILLS.—"The murder was committed on the 29th of July 1850. The body was not exhumed, and it would have been useless to do so for the purposes of examination after so considerable an interval; but the fact of the deceased having been killed is undoubted; indeed the prisoner Shonaram admits it, urging, however, in his defence that the deceased was unintentionally killed by the witness Jotye, who aimed a blow at the prisoner, which struck the deceased on his head and caused his death. The prisoner has not even attempted to substantiate this plea by evidence, while the facts of the case afford strong presumption that the homicide was wilfully committed by strangulation.

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"It is in evidence that both the deceased and the prisoner Shonaram visited the widow Panchee; that there was ill will between them on that account; that on the night of the murder the deceased discovered the prisoner in the house of Panchee and called him to come out, doubtless with the view to expose his conduct and bring disgrace on him. The witness Panchee deposes to the prisoner rushing out of the house in an angry mood, seizing the deceased, throwing him down, and throttling him. The witnesses Jotye and Shukurie who, I have no doubt, accompanied the deceased for the express purpose of witnessing the detection of the prisoner in criminal intercourse with Panchee, distinctly swear to seeing the deceased on the ground, and the prisoner in the act of strangling him, to their seizing the latter, and finding the deceased lifeless. I see no reason to doubt the truth of the above evidence, and deem it fully sufficient to convict the prisoner Shonaram of the wilful murder of the deceased. The murder was, it is true, committed suddenly, under the impulse of anger, but the manner in which it was perpetrated evinced a malignant and murderous design; and I consider the prisoner deserving of death.

"It appears from the evidence that the relatives of the deceased, and the villagers conspired together to conceal the murder, and thereby obstruct the course of public justice. The prisoners Nos. 35, 36, 37, 38, were instrumental in having the body buried, and concealing from the public authorities the fact of the occurrence of the murder; and I would sentence the prisoner Bholye, who is the chowkeedar of the village, to imprisonment for two (2) years and the others to one year's imprisonment each without labor, if redeemed by the payment of a fine of rupees fifty (50) by each, which, under the circumstances of the case, is, I think, an adequate punishment."

MR. R. H. MYTTON.—"I agree with Mr. Mills in convicting the prisoner Shonaram Mundul of wilful murder, but do not consider that it is a case calling for capital punishment.

"Of the circumstances immediately preceding the murder we have two accounts, that of Panchee and of the prisoner himself. The former states that Shonaram was with her at night, when her former paramour came and called to him to come out and give him a smoke, when Shonaram girt up his loins and went out and squeezed the deceased's throat; he fell, and Shukurie and Jotye, who were with the deceased, bound the prisoner.

"The prisoner, on the other hand, states that the deceased, Shukurie and Jotye pulled him out of Panchee's house.

"Whichever may be the true account it is evident to me that the murder was unpremeditated, and perpetrated under the sudden provocation of being disturbed in intercourse with a

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mistress. The prisoner was provided with no weapon and sought to provide himself with none. The practice of the court, as shown in numerous precedents, is not to pass sentence of capital punishment in such a case. I consider the sentence of imprisonment for life in transportation recommended by the sessions judge adequate. The sentences proposed by Mr. Mills as regards the other prisoners are within the competence of one judge to pass. I have, therefore, abstained from considering the case as against them."

SIR R. BARLOW.—"I concur with Mr. Mytton in thinking that this is not a case which calls for a capital sentence on the prisoner Shonaram Mundul. There is no evidence of premeditation, nor, though it is proved that Deedar Mahomed was killed by Shonaram, is it shown what was the immediate cause of death. No examination of the corpse could take place, the nature of the injury received is, therefore, not known. Under the above circumstances, I would sentence the prisoner Shonaram to imprisonment for life in transportation."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

KALACHURN MYTEE

versus

RAJUN KHANRA.

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Case of RAJUN KHANRA.

The prisoner, who was personally opposed to one Gohinee Mahapatur, a witness, and recognized by him and others in the act of dacoity, was convicted and sentenced as noted.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, attended with arson, and wounding the prosecutor's brother, and stealing therefrom property to the value of rupees 765-14-10; and, 2nd count, aiding and abetting as an accomplice in the above dacoity.

CRIME ESTABLISHED.—Dacoity in the house of the prosecutor, attended with arson, and the wounding of the prosecutor's brother, and stealing therefrom property to the value of rupees 765-14-10.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 1st December 1851.

Remarks by the sessions judge.—"This trial is supplementary to that held in the month of August last, No. 1. The circumstances attending it are as follow:—On the night of the 4th June 1851, the house of the prosecutor was burglariously entered by a gang of thirty or forty armed dacoits who set fire to it and carried off property to the value of Company's rupees 765-14-10. The prisoner pleads 'not guilty.' The witness

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Gohinee Mahapatur deposes, and his testimony is corroborated by other witnesses, that he and others opposed the dacoits in their retreat; that a scuffle ensued between him and the prisoner, whom he distinctly recognized by the light of the flames of the burning houses; that both he and the prisoner were wounded, the marks of which both parties now carry on their persons. It is also in evidence that nothing was seen or heard of the prisoner from the 23rd Jeyt, the night the dacoity occurred, till the day of his arrest, the 1st Kartick. On that day he appeared at the house of one Narain Koron, at the village of Durwa, eight or ten *coss* distant from prisoner's own village, in the character of a fuqeer, and solicited alms, and was then recognized by the witness Radha Kisto Mytee, a discharged *peadah* in the Salt Department. This witness has relations residing in the village of Kejoota, where prisoner's house is, and was in the habit of frequently seeing him (the prisoner) there, and was consequently familiar with his appearance. The prisoner was made over to the nearest police thanna and sent to the magistrate. In his defence, prisoner pleads that he left his house in the month of Bysakh 1258, in consequence of a family quarrel, and assumed the character of a fuqeer as a means of subsistence. This he fails to establish. The inquiry instituted by the darogah on the 24th Jeyt, proves that the prisoner left his home on the night of the robbery and was not seen or heard of till arrested on the 1st Kartick, and his absence was duly reported by the *pharee* burkundauzes to the darogah when investigating the dacoity. His relatives stated to that officer that, on the night the prosecutor's house was robbed and burnt, the prisoner came home wounded and left again immediately. The prisoner's head bears the mark of a wound on the top of it that has recently healed. He accounts for it by stating that it was caused by an accident. In the absence of all proof to the contrary, I attach credit to the testimony of the witnesses for the prosecution. There is nothing improbable that they should have recognized the prisoner when engaged in a personal combat with the witness Gohinee Mahapatur, especially as his person was well known, and the spot must have been illuminated with the flames proceeding from prosecutor's house. The prisoner's subsequent proceedings, and the mark of a wound on his head, are circumstances strongly presumptive of his participation in the dacoity. I, therefore, convict him of the charges preferred against him, and sentence him to ten (10) years' and two (2) years' additional in lieu of stripes, altogether twelve (12) years' imprisonment with labor in irons in banishment, and to pay a fine of rupees seven hundred and sixty three, one anna, (763-1-0), equal to the value of the property yet unrecovered by the prosecutor. I have mitigated the sentence in the instance of this

prisoner, as he does not appear to have been a leader of the gang, nor to have been previously convicted of any heinous offence.

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Case of RAJUN KHANRA.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow.)—"The prisoner, who was apprehended recently, is one of a gang of dacoits, of whom three were committed in July last to the sessions, and were finally sentenced by this court on the 2nd October. He was recognised by one Gobinee Mahapatur in the act of dacoity, and was personally opposed to him on the occasion. Other witnesses also named and recognised him on the former trial, and again when confronted with him on this. Several torches were lighted and prosecutor's house was entirely burnt down by the dacoits. The prisoner was also previously known to the witnesses, so that there was no difficulty in his recognition. The defence, even if supported, which it is not, would be of no avail to the prisoner; I fully concur with the sessions judge in the prisoner's conviction, and seeing no reason to interfere in appeal, I uphold the sentence which the sessions judge has awarded."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.**

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The confessions of the prisoner before the police and the magistrate, on which his conviction rested, being open to suspicion, and being unsupported by any circumstantial proof, the prisoner, who was convicted by the sessions, was, on appeal, acquitted by the Nizamut Adawlut.

JHUNDOO NONEAR

versus

LOORKA.

CRIME CHARGED.—Highway-robbery and plunder of property valued at rupees 36-13-6.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 1st December 1851.

Remarks by the sessions judge.—"The prosecutor was returning home to Secunderpore from the Goolabgung market, about half a mile distant, on the evening of the 27th September last, accompanied by the three eye-witnesses, Chukoo (witness No. 1), Oodermun (witness No. 2) and Hosseinee (witness No. 3), when they were attacked by a gang of highway robbers, who, after slightly beating them, plundered them of the bundle of cloth Hosseinee (witness No. 3) was carrying, and the prosecutor also of a few articles he had about him, and then decamped, on

* The court noticed the irregular manner in which the foujdaree confession was attested, and called the attention of the magistrate to the Circular Order, No. 23, of volume I., on the subject.

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the villagers running up at the outcries set up by the prosecutor's party.

"No recognition of the robbers is said to have taken place at the time of the occurrence, except Bundhoo (prisoner No. 2), chowkeedar of Secunderpore, who being apprehended by Nasir Alee, burkundauz, on the prosecutor's naming him, both prosecutor and prisoner made their appearance together before the darogah then absent from the thanna, on 1st of October last. On the darogah's collecting together a number of the villagers of the neighbourhood, the prosecutor and his companions, witnesses Nos. 1, 2 and 3, are said to have recognized all the other prisoners, none of whom, however, was apprehended, until the 4th idem, after the following occurrence, as singularly, as improbably, narrated. Early on the previous morning, the 3rd, whilst the darogah was at Secunderpore, an alarm was set up, when in a rice field, at some distance from the village, a bundle was found, which turned out to contain nine articles, or pieces of cloth recognized by the prosecutor as forming portions of the stolen property. Bhuttun (witness No. 8) and Bhinuk (witness No. 9) depose to this effect, and Doorbejoy (witness No. 10) and Gundouree (witness No. 12) to their having been engaged in their fields, when they saw Pirtun (prisoner No. 4), Bhojraj (prisoner No. 5) and Jhuri (prisoner No. 6), throw the bundle down and run away.

"Loorka (prisoner No. 1) confessed both before the police, on the 4th October, and before the magistrate, at the same time implicating all the other prisoners.

"Bundhoo (prisoner No. 2), apprehended previously, as already stated, on the 1st, has always pleaded 'not guilty,' as have also the remaining prisoners, who also allege that they were detained for several days by the darogah, (very probable under all the circumstances of the case,) who then caused the prosecutor's party to recognize them. They, at the same time, however, assign frivolous motives to the prosecution and set up *alibis*, which in no respect have been supported by the several witnesses called by them.

"The *futwa* of the law officer convicts prisoner No. 1 on his own confessions, and declares him liable to discretionary punishment by *akoobut;* discrediting both the recovery of the bundle, and the recognition of the other prisoners, acquits them.

"The recovery of the bundle throws discredit on the prosecution at the outset. It is a manifest police concoction, very clumsily contrived, very deserving of two such witnesses as Nos. 10 and 12, and quite in keeping with the statement on record, styled his *izhar*, said to have been made by Bhojraj (prisoner No. 5) on the 3rd October, No. 14, in which he acknowledges his instrumentality in causing the bundle to be

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thrown where it was found, consequent on his having been required by the darogah to trace out the offenders. Thus, according to the darogah's own record, this prisoner had been previously in attendance, and yet he is made to undergo the subsequent farce of being recognized out of a crowd by the prosecutor and his party, witnesses Nos. 1, 2 and 3, who, according to their own statements, accompanied the darogah during his investigations under no kind of surveillance whatsoever. They actually saw all the prisoners pass by, in charge of the police, before their recognition of them took place. There is also the darogah's report of the 3rd October, No. 7, in which he represents having sent for prisoners Nos. 4, 5 and 6, as suspicious characters, and having warned them to discover the offenders. According to his following report of the 4th idem, No. 9, the prosecutor is said to have recognized prisoners Nos. 1, 3 and 4; and by the final one of the 5th, No. 12, the witnesses Nos. 1, 2 and 3's recognition is reported, though their depositions before him to that effect are dated the 6th, yet, according to their deposions before this court, no two recognitions, one day intervening between each, could have taken place. In any case their testimony under examination is so inconsistent, contradictory and worthless as to leave little doubt that this recognition was a base rehearsal got up for the occasion, to prove any one guilty rather than no one, and on which not the slightest reliance can be placed. Further, so clumsy is the concoction, that though prisoner No. 1 was forwarded to the station as a confessing prisoner on the 4th, and prisoner No. 2 and the remaining prisoners not until the 6th following, yet the witnesses Nos. 1, 2 and 3, in their evidences of the 6th, are recorded as having recognized prisoner No. 1, thus absent, and professedly unknown by name in the following terms:—'There was also another, who has been sent on to the magistrate.' '*Ek admee aur bhee, jiska challan hooa, woh bhee tha.*' The prosecution, therefore, as thus resting solely on the recognition so dishonestly conducted, is utterly worthless, and concurring with the law officer, prisoner No. 1 has been sentenced as within, and the other prisoners released.

"The magistrate's attention has been drawn to the very questionable conduct of his police."

Sentence passed by the lower court.—Five (5) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I agree with the sessions judge in discrediting the evidence to the recognition of the prisoners, and the recovery of the bundle of stolen property. The conviction of the prisoner No. 1, rests, therefore, solely on his confessions before the darogah and the magistrate. His defence is, that the first was

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extracted from him by threats and promises, and the last was made under the influence of the same, the burkundauz, who escorted the prisoner to the magistrate, having also held out inducements to him to confess on the way. Though this plea is not supported by the evidence of the witnesses cited by him, yet, with reference to the circumstances of the case, and the questionable conduct of the police, as commented on by the sessions judge, I cannot but think that unfair means were used to obtain the Mofussil confession. The confession before the magistrate was made the next day; and if the first confession was not voluntarily made, the interval of time between the confessions (the prisoner being during this period in the custody of the Mofussil police officer,) is too short to allow of the supposition that the impression under which the first was made was removed. The suspicion, which arises from the facts of the case, that the confession was not the result of free-will, is strengthened by the circumstance of the prisoner never having been before accused of theft, and of the statements contained in it being in no way corroborated by other evidence. I cannot place reliance on the confessions, and therefore acquit the prisoner.

"The foujdaree confession of the prisoner is attested by two chuprassees, who can neither read nor write. The sessions judge should have noticed this irregularity. He will now do so, and call the attention of the magistrate to the Circular Order, No. 23, of volume I."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

LOHAREE MEER

versus

PERTAB HAREE (No. 26), OORAN HAREE (No. 27) AND GUNGADHUR, ALIAS GUNGARAM HAREE, (No. 28.)

1852.

March 6.

Case of PERTAB HAREE and others.

Sentence on one prisoner convicted of dacoity, and on two others of knowingly receiving stolen property, upheld by the Nizamut Adawlut. Remark by the court, that the two others might, equally with the other prisoner, have been also convicted of the graver offence

CRIME CHARGED.—1st count, dacoity attended with wounding, committed in the house of the prosecutor, from whence property, valued at rupees 224-7-0, was plundered; 2nd count, accomplices in the above-mentioned dacoity; and 3rd count, knowingly receiving plundered property acquired by committing the above-mentioned dacoity.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer, Mr. F. A. E. Dalrymple, magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 17th December 1851.

Remarks by the sessions judge.—"It is on evidence in this case, that on the night of the 16th Bhadoon last, (31st August 1851), the house of the prosecutor was attacked by dacoits, and property to the amount of some rupees 224-7-0, plundered therefrom. The prosecutor was struck on the head by one of the dacoits with an iron instrument, and a severe wound was inflicted. The prisoners in this case, Nos. 26, 27 and 28, were apprehended by the foujdaree *gomashta* of a neighbouring village, witness No. 1, who states that on the night of the dacoity, he sent to inquire if prisoners Nos. 26, 27 and 28, who reside in his village, were at their houses, and finding them absent, he kept watch for them, and early in the following morning, he apprehended them on their way home, near their houses, with a large bundle of clothes and brass utensils, which proved to be a portion of the property plundered from the house of the prosecutor. The apprehension of the men with the stolen property in their possession, is clearly proved by the evidence of witnesses Nos. 1, 2, 3 and 4.

"Prisoner No. 26, before the police officer in the Mofussil, confessed to being concerned in the dacoity, and to the property found on him being part of the property stolen from the house of the prosecutor, and before the magistrate he made a similar statement, and in both statements named prisoners Nos. 27 and 28 as his accomplices. Prisoner No. 27 bears a bad character, and was once imprisoned for one year, on default of giving security for good conduct. The confessions made by prisoner No. 26 in the Mofussil before the darogah, and at the station before the magistrate, were duly attested and sworn to in my

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court. The brass pots, clothes, &c., found on the prisoners, are clearly proved to be the property of the prosecutor.

"Pertab Haree No. 26, in his defence, pleads nothing deserving of attention. He named witnesses to speak to his being at home on the night of the dacoity; but they are unable to corroborate his statement, and he is incapable of clearing himself of the crime with which he is charged.

"Ooran Haree, prisoner No. 27, admits that on the night of the dacoity he was not at home; but his witnesses know nothing about it.

"Gungadhur Haree, prisoner No. 28, calls witnesses to character, but none in support of his defence that he made, *viz.*, that he was at home the whole night of the dacoity.

"I convict Pertab Haree, No. 26, of dacoity with wounding, and sentence him, with labor in irons, for nine (9) years. Prisoners Ooran Haree, No. 27 and Gungadhur Haree, No. 28, I convict of knowingly receiving plundered property acquired by dacoity, and sentence each to four (4) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut,—(Present: Mr. A. J. M. Mills.—"The prisoners have appealed, but their pleas, which are unsupported, avail them nothing. It is in evidence that the prisoners were absent from their homes on the night of the dacoity, and the *gomashta* of the village suspecting, from the previous bad character of prisoner No. 27, that they had gone abroad for some dishonest purpose, set a watch upon them. The fact of their return at 3 A. M., together, of Gungaram having a bundle on his head, of their flight and pursuit, and of Gungaram throwing down the bundle, is established by the evidence of four witnesses, who distinctly swear to their persons. It is further proved, that they were apprehended soon after they reached their houses, and that the contents of the bundle formed a portion of the property which had been plundered from the house of the prosecutor, and the articles in question belonged to him. Independent of this strongly-circumstantial proof of the guilt of the prisoners, the prisoner Pertab Haree, No. 26, confessed before the police and the magistrate, naming the other prisoners as his associates in the robbery. The conviction of the prisoner No. 26, of dacoity attended with wounding, and of the prisoners Nos. 27 and 28, as accessaries, in knowingly receiving stolen property, is upheld, but I am of opinion, with reference to the proved facts of the case as above set forth, that the two latter prisoners might also justly have been convicted of the graver offence. The fact of the property being found on them and of their inability to prove how they came by it, taken with the short interval which elapsed between the loss of the articles and the finding of them, affords presumptive evidence of the prisoners having committed the dacoity. I reject the appeal."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

DABEE CHURN MOOCHEE, PREMCHAND MOOCHEE AND ISHWUR MOOCHEE.

versus

HULLODHUR MOOCHEE.

1852.

March 9.

Case of HULLODHUR MOOCHEE.

Conviction and sentence for burglary, confirmed by the Nizamut.

CRIME CHARGED.—*Charge No.* 1.—1st count, burglary in the house of the prosecutor, Dabee Churn Moochee, in which property to the amount of annas 11 was plundered; 2nd count, accomplice in the above burglary; and 3rd count, receiving and keeping property, knowing it to have been obtained by the above burglary.

Charge No. 2.—1st count, committing a burglary in the house of the prosecutor, Premchand Moochee, in which property to the amount of rupees 2-3 was plundered; 2nd count, accomplice in the above burglary; and 3rd count, receiving and keeping property, knowing it to have been obtained by the above burglary.

Charge No. 3.—1st count, burglary in the house of the prosecutor, Ishwur Moochee, in which property to the amount of annas 3 was plundered; and 2nd count, accomplice in the above burglary.

CRIME ESTABLISHED.—Burglaries in the houses of Dabee Churn, Premchand and Ishwur Moochees.

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 16th January 1852.

Remarks by the sessions judge.—"The prisoner in this case was seized with property belonging to Dabee Churn and Premchand and a *sind katee* in his possession, while running away from the house of the first-named prosecutor.

"When the hue and cry of 'stop thief' was raised, the second and third prosecutors came to the spot, and they recognized some of their property, on which they returned to their houses to ascertain if they had been robbed, and found both their houses had been burglariously entered as well as that of the first prosecutor.

"The prisoner at the time before the police and the magistrate acknowledged his guilt, naming two persons who have not been seized. The proof of guilt being very strong, the *futwa* of the law officer declared the crimes charged proved, in which I concurred."

Sentence passed by the lower court.—Four (4) years' imprisonment, and two (2) years' more in lieu of corporal punishment, in all six (6) years' imprisonment, with labor in irons.

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March 9.

Case of HULLODHUR MOOCHEE.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The appellant urges in his petition of appeal, that he had an intrigue with the sister of the prosecutor, but has omitted to state with which of the three prosecutors' sister. He did not even plead this excuse at his trial. There cannot be a doubt of the prisoner's guilt; and I confirm the conviction and sentence."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

RAJKRISTO SIRKAR

versus

BYEDONATH SHEIKH (No. 1) AND MOTEE KHAN (No. 3).

1852.

March 9.

Case of BYEDONATH SHEIKH and another.

Sentence of imprisonment with labor, for nine years, passed upon two prisoners convicted of highway-robbery with assault, upheld on appeal by the Nizamut.

CRIME CHARGED.—1st count, beating and committing a highway-robbery upon the prosecutor, in which cloth, rupees and pice, to the amount of Company's rupees 56-15-6, were plundered; and 2nd count, having in their possession part of the plundered property, well knowing the same to have been plundered in the above-mentioned highway-robbery.

CRIME ESTABLISHED.—Highway-robbery, in which property to the value of rupees 56-15-6 was robbed from the person of the prosecutor, and knowingly having had in their possession a part of the plundered property.

Committing Officer, Mr. A. Hope, assistant magistrate, exercising the powers of joint magistrate of Santipore, Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 9th January 1852.

Remarks by the sessions judge,—"The crimes charged have been according to the *futwa* of the law officer of this court, (and in which the judge concurred) proved by the confessions of the prisoners before the police and the assistant magistrate at Santipore, and the finding eighteen pieces of new cloth in the house of the first prisoner, and a nineteenth piece with the grandmother of the prisoner No. 2, which she stated, that he had given to her; all the said pieces of cloth bearing the prosecutor's mark, he being a cloth merchant, and the property having been proved to be his. They have been convicted and sentenced accordingly.

"A third prisoner has been acquitted for want of proof."

Sentence passed by the lower court.—Each seven (7) years' imprisonment, and two (2) years' more in lieu of corporal punishment, in all nine (9) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed. They urge that their confessions were extorted from them by ill-treatment on the part of the police. They repeated their confessions, which have been duly attested, before the assistant to the magistrate, and a part of the stolen property was found in their possession, *viz.*, Nos. 1 to 18, in the house of prisoner No. 1, and Nos. 20 to 35, in the house of prisoner No. 3. These facts are established by good and credible evidence, and I uphold the conviction of the prisoners of highway-robbery attended with assault; the offence of knowingly receiving stolen property is merged in the former crime. The sentence, considering the injuries sustained by the prosecutor at the hands of the robbers, is not too severe. The remarks recorded by the sessions judge on the trial, are not consistent with the facts of the case as above set forth, and are calculated, if unexplained, to mislead. He makes no mention of the property found in the possession of the prisoner No. 3, while the observations relating to the nineteenth piece of cloth apply to the prisoner No. 2, who was *acquitted*. He is requested to explain this inconsistency, as also to state why he did not convict the prisoners of highway-robbery attended with assault as charged."

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Case of BYKDONATH SHEIKH and others.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge*.

GOVERNMENT

versus

OURUNG SHAH

CRIME CHARGED.—Severely wounding Musst. Jeerah, with a *dão*, with intent to murder.

CRIME ESTABLISHED.—Wounding with a hatchet.

Committing Officer, Mr. H. C. Halkett, magistrate of Backergunge.

Tried before Mr. W. J. H. Money, sessions judge of Backergunge, on the 26th December 1851.

Remarks by the sessions judge.—"The Government was prosecutor in this case. The prisoner admitted in this court having wounded witness No. 1, Musst. Jeerah, but without any intention of killing her. In the Mofussil and before the magistrate, his admission was to the same purport,—the prisoner remarking, that the witness first gave him two or three blows with a broom which excited his anger. Witness No. 1, Musst. Jeerah, deposed, that the prisoner was her husband's brother, and they lived and messed together; that on the 2nd or 3rd of Bhadoon

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It is not necessary to consider extenuating circumstances, which have already been considered in the sentence passed by the sessions court.

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last, day not remembered, about two *ghurries* of the day remaining, she and her mother, witness No. 2, Musst. Rutnee were quarrelling, when the prisoner approached with a hatchet in his hand, abused her mother, and asked her why she was quarrelling; that upon this, she, witness, gave the prisoner two blows with her broom, when he struck her twice with the hatchet on the left eye and right shoulder. There was no ill-feeling between them, and this witness did not think the prisoner intended to strike her, but to ward off the blows she aimed at him'. Witness No. 2, Musst. Rutnee, confirmed the statement of her daughter, but alluded to three blows being given by the prisoner, namely, on the head, the left eye and right shoulder. Witness No. 3, Ram Gazee, deposed to his apprehension of the prisoner, on the day alluded to, and to his seeing the witness No. 1, Musst. Jeerah, with a wound on her head, left eye and right shoulder, which the witness No. 2, Musst. Rutnee, mentioned had been caused by the prisoner. Witness No. 9, Assanoollah, merely deposed to the apprehension of the prisoner by Ram Gazee, witness No. 3, Witness No. 10, Bozurg and witness No. 11, Sooltan deposed to the same purport, and also to their seeing Musst. Jeerah, witness No. 1, with a wound on her head, left eye and right shoulder. The evidence of witness No. 12, Nagor Gazee and witness No. 13, Chand Mollah Chowkeedar was merely hearsay. The witnesses to the *sooruthal* deposed to a wound under the left eye of the witness No. 1, Musst. Jeerah, about three fingers long, the bone being cut, a small wound over the left eyebrow, one finger long, a wound on the left side of the head about four fingers long, half a finger broad and half a finger deep, a wound on the right shoulder, three fingers long, one finger broad and two fingers deep, the bone being cut, a wound under the left thigh, about three fingers long, as if from a hatchet.

"The uncovenanted assistant surgeon deposed, that 'there 'was a severe wound from some sharp cutting instrument over 'the left eye of Musst. Jeerah, which penetrated to the bone and 'indented it, likewise a superficial wound, three inches long, on 'the crown of the head, a wound on the right shoulder, about 'two inches long, which penetrated to the bone.' He further deposed, that 'there was never exactly any danger to be appre-'hended to her life from any of these wounds, though the one 'on the eye was of a severe character,'—the woman being about four weeks under medical treatment. The prisoner had no witnesses, but gave a petition alluding to his striking Musst. Jeerah in warding off the blow which she aimed at him, and declared, that he had some dispute with Ram Gazee, witness No. 3, about rent.

"I concurred with the jury in considering the prisoner guilty of wounding Musst. Jeerah with a hatchet, but without any evil intention, and sentenced him to punishment accordingly."

Sentence passed by the lower court.—Three (3) years' imprisonment without irons, and a fine of fifty (50) rupees or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The sessions court in its finding and sentence has taken into consideration the extenuating circumstances in the case. There is no reason to extend to the prisoner further leniency as pressed for in his appeal. It is rejected."

1852. March 10. Case of OORUNG SHAH.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

GOVERNMENT

versus

JHOOMUN SINGH.

1852. March 10. Case of JHOOMUN SINGH.

Conviction of culpable homicide by the sessions court set aside, and the prisoner convicted of assault, and subjected to a suitable mitigated sentence.

CRIME CHARGED.—Culpable homicide of Gungadhur Myetro.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 24th December 1851.

Remarks by the sessions judge.—"The prisoner is an up-country Brahmin. He goes on pilgrimage and begs. Early on the morning of the 9th of November, there was a noise heard by the neighbours of the temple of Nuklessur, at Kalighat, and witnesses Nos. 1 and 2 say that they saw the prisoner assault a Hindoostanee Brahmin who fell. There are some discrepancies in their evidence. They even differ as to the spot where the deceased fell. One states that he fell at the door of a neighbour, and the other, that he fell inside the temple; and they both say that the prisoner hit the other on the head with a brick; yet it appears by the evidence of the medical man who examined the body, that there was no mark on the body or injury to the brain, but that death was occasioned by a rupture of a much-diseased spleen. Witness No. 8 states that he heard the noise of a quarrel and went to his door, which is only a few yards from the temple of Nuklessur, and that the deceased man staggered towards him and fell, and said that a *Khotta* man had beaten him. The prisoner brought the clothes of the man, and threw them down by him as he lay. There can be no doubt but that the deceased man, who was recognized as Gungaram, died from the rupture of his spleen, which took place in a dispute with the prisoner; but it is doubtful, whether the direct cause of the rupture was a blow, or a fall or by the man's own exertions, as he came staggering towards the witness No. 8. It is probable that he had received a serious injury before he fell,

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although there was no mark of it. The prisoner certainly assaulted the deceased man, and the consequence of the assault was the man's death. The prisoner was at first suspected of being insane, and although the medical officer declined to give a decided opinion on the subject, I saw no reason for thinking him so."

Sentence passed by the lower court.—One (1) year's imprisonment, without irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"The medical officer says in his deposition in this case.—'It is possible that the spleen was ruptured *without any 'violence having been used towards the man by any other party.'* There being no proof that the death, from rupture of the spleen, was caused by the beating, the conviction of culpable homicide cannot be sustained. In the case of Dowlut, Nizamut Adawlut Reports, Volume II., pages 396 and 397, to which the additional sessions judge in his letter, No. 35, of the 24th ultimo refers, there was no conviction of culpable homicide, but only, as appears from the original *futwa*, of assault of an aggravated kind, from which death ensued,—the deceased having, in avoiding the blow, stepped back a few paces into a well without a parapet, which, it was to be inferred, was within the observation of the prisoner, and thus constituted the circumstance of aggravation. In the present instance, the very diseased state of the spleen of the deceased was an accident, of which the prisoner had no knowledge. The case, as proved on the evidence, is one of assault only. I convict the prisoner of assault, and reduce the sentence from imprisonment for one (1) year to imprisonment for six (6) months, from the date of the sentence by the additional sessions judge."

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

GOVERNMENT

versus

ABBOOL HOSSEIN (No. 3) AND SHEIKH GOPAL (No. 4 APPELLANT).

1852.

March 11.

Case of GOPAL SHEIKH.

The court concurred with the jury, in opposition to the opinion of the sessions judge, in acquitting a prisoner convicted by the sessions judge of affray attended with culpable homicide. The blow, given by the prisoner, was held to have been in lawful self-defence.

CRIME CHARGED.—1st count, wilful murder of Jangeer; 2nd count, affray attended with the culpable homicide of the said Jangeer, and the wounding of Abbool Hossein and Sheikh Gopal.

CRIME ESTABLISHED.—Affray attended with culpable homicide and wounding.

Committing Officer, Baboo Jogish Chunder Ghose, deputy magistrate of Burrisaul.

Tried before Mr. W. J. H. Money, sessions judge of Backergunge, on the 22nd December 1851.

Remarks by the sessions judge.—"The Government was prosecutor in this case.

"Prisoner No. 3, Abbool Hossein, denied the charges on which he was arraigned in this court: in the Mofussil and before the magistrate, he admitted the affray, in which he and prisoner No. 4, and the deceased Jungeer were struck. Prisoner No. 4 admitted the affray in this court, in the Mofussil and before the magistrate; expressly stating here, that he had struck prisoner No. 3. From the evidence of Musst. Koonee, witness No. 1, it appeared that in the month of Bhadoon last, date not remembered, early in the morning, the prisoner No. 3, Abbool Hossein, came to her house, and asked her husband (deceased) and her son, Gopal, prisoner No. 4, to cut his (Abbool Hossein's) paddy; that on her son mentioning there was too much water in the field, Abbool Hossein went away, and returning about 12 o'clock in the day, asked her son Gopal, who was standing in front of the house, why he did not cut the paddy, and gave him abuse; that her son Gopal becoming angry abused Abbool Hossein, upon which her husband advanced to interfere, when Abbool Hossein struck him on the head with a *lattee* he had brought in his hand, her son Gopal then taking up his stick, and receiving a blow on his finger; that in consequence of the blow her husband was rendered insensible, and information being given first to the zemindar's cutcherry and then to the thanna, the darogah arrived in four or five days and sent her husband to Burrisaul, where he died in hospital from the effects of his wound; there was no ill-will existing between her husband and the prisoner Abbool

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Hossein, or between any of them. Deceased was about sixty years old, and though he had been indisposed, had quite recovered about ten days before the accident. This witness described the wound on the left side of the crown of the head to be about three fingers long and two fingers broad. Witness No. 2, Kishore Khan, deposed to the dispute, between prisoner No. 3 and prisoner No. 4, on a Friday in the month of Bhadoon last, about the paddy not being cut; to the prisoner No. 3, Abbool Hossein, giving prisoner No. 4, Gopal, a blow, which he received on his right hand finger; to the father, Jaugeer (deceased) advancing to interfere, when Abbool Hossein aimed a second blow at Gopal, which struck his father (Jangeer) on the head as described, and to the prisoner Gopal then striking prisoner No. 3, and wounding him on the head. The evidence of witness No. 3, Nussiroodin, was to the same purport, except that he did not observe prisoner No. 4 give any blow. Witness No. 4, Gorachund Chung, and witness No. 5, Roy Chand Chung, deposed also to the dispute between prisoners Nos. 3 and 4; to the deceased interfering and receiving a blow on his head from Abbool Hossein's *lattee:* from their statement it would also appear that two other persons had accompanied the prisoner No. 3 to the house of prisoner No. 4. Witness No. 12, Kajul Khan Chowkeedar, and witness No. 13, Bhosye Khan, deposed to their having seen the deceased with a wound on his head, and the former hearing from him that prisoner No. 3 had beaten him. The deceased deposed before the darogah to the fact of the dispute between his son Gopal and prisoner No. 3, when he came out to interfere, and received a blow on his head from prisoner No. 3, which was intended for his son prisoner No. 4. The witnesses to the *sooruthal* deposed to a wound on the left side of the crown of the head of the deceased about three fingers long and half a finger broad, as if from a *lattee.* The uncovenanted assistant surgeon deposed that the deceased had 'a 'wound on the crown of the head, which was about two inches 'long, and fractured the skull,' that 'on holding a *post mortem* 'examination, he found the skull fractured in several places, and 'a depression of the inner plate of the skull on the membranes 'of the brain: that there was likewise an extravasation of black 'blood on the surface of the brain, which was sufficient to 'account for his death. He considered the injury to have been 'inflicted by some blunt instrument similar to the one produced 'in court.' It appeared that the deceased was comatose on his arrival at the station from the effusion of blood on the brain, and died about thirteen days after his admission into the hospital, being in other respects quite healthy. The prisoner had no witnesses, but gave petitions, stating that the witnesses for the prosecution were *ryots* of Caleepersaud Buttacharge, talookdar,

who had a quarrel with their zemindar, the chowkeedar having sided with the talookdar in this case. 1852.

"The jury acquitted prisoner No. 4, and considered prisoner No. 3 guilty of beating and wounding the deceased, from the effects of which he expired. I dissented from this verdict, and considering the prisoners guilty of affray attended with culpable homicide and wounding, sentenced them accordingly. Although the offence of prisoner No. 4 was very much less in comparison with that of prisoner No. 3, I could not hold him altogether blameless, but imposed a more moderate punishment."

March 11.

Case of Gopal Sheikh.

Sentence passed by the lower court.—No. 3 to be imprisoned for three (3) years' without irons, and to pay a fine of fifty (50) rupees, in lieu of labor within a week, in default, to labor until the fine be paid or the term of his sentence expire, and No. 4 to be imprisoned for six (6) months without irons, and to pay a fine of fifteen (15) rupees, in lieu of labor within a week, or in default, to labor until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"The court concur with the jury in this case in thinking that the blow struck by the prisoner No. 4, Sheikh Gopal, was in lawful self-defence, and that he is, therefore, entitled to acquittal. The attack made on him by the other prisoner was very wanton.

"The court acquit him accordingly."

Present:

Sir R. BARLOW, Bart., *Judge.*

A. J. M. MILLS, Esq., *Officiating Judge.*

1852.

March 11.

Case of Mroma and another.

NALAKHYNG

versus

MROMA (No. 1) and MOUNGOLA (No. 2).

The prisoner Mroma was convicted, on her own confessions, and on the production from her person of property belonging to her deceased husband, Chandabaw, which she had previously stated had been carried off by the thieves, whom she alleged had murdered him, of the wilful murder of the said Chandabaw and sentenced capitally.

The court, not considering the evidence sufficient for the conviction of the other prisoner, Moungola, acquitted him.

Crime Charged,—No. 1, murder of Chandabaw, her husband, and No. 2, being accessary after the fact to the murder of the said Chandabaw.

Committing Officer, Captain S. R. Tickell, principal assistant commissioner of Akyab, Arracan.

Tried before Captain A. P. Phayre, commissioner of Arracan, on the 22nd January 1852.

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Remarks by the commissioner.—"The prisoners in this case are brother and sister. They reside in the village of Tangan in the district of Akyab. The deceased, whose murder is charged, was husband to the prisoner No. 1, Mroma. It appears from the evidence of Meer Chyn-yo (witness No. 13,) the wife to prisoner No. 2, Moungola, that on the night in question about midnight, she and her husband were asleep in their own house (which is close to that of prisoner No. 1, Mroma). The prisoner No. 1, Mroma, came and called to them and said she had cut or wounded her husband. Both the witness and her husband, prisoner No. 2, Moungola, went and called a neighbour, the witness No. 7, Thak-nyng-froo, and told him what had happened. Those three then went to the house of another neighbour, witness No. 8, That-wyn, and after arriving there, and telling him what had happened, witness Meer Chyn-yo, hearing her child cry, went home. A short time after that, the witness heard the prisoner No. 1, Mroma, cry out that robbers had come and killed her husband, and then the villagers collected; but this witness appears not to have been present at any of the subsequent transactions. Witness No. 7, Thak-nyng-froo, states, he was called at past midnight of the night in question by the prisoner No. 2, Moungola, and the latter's wife, the witness No. 13, Meer Chyn-yo. The latter stated that her sister-in-law (meaning prisoner No. 1, Mroma) had cut down her husband. They asked this witness to come to the deceased's house, and they three went and called the witness No. 8, That-wyn. The witness Thak-nyng-froo also states that the witness Meer Chyn-yo accompanied them to the house of deceased, and did not leave on account of the crying of her child until after reaching that house. At the foot of the ladder, leading up to the house, they saw the body of the deceased Chandabaw lying face downwards, and with cuts on the back and head.

"Witness No. 8, That-wyn, went off to call a relation to prisoner No. 1, namely, witness No. 9, Krangphoree, while witness Thak-nyng-froo and prisoner No. 2, Moungola, remained watching. After a time this witness also heard prisoner No. 1, Mroma, calling out within her house that robbers had plundered the house and killed her husband. Then the villagers came up, and prisoner No. 1, Mroma, came outside, and again said her husband had been killed by thieves, who had ran off to the east. The people went and searched, but could find no thieves. This witness with four others, among whom was the prisoner No. 2, Moungola, went off to inform the Rawagoung, or headman of the village circle, who lived about the distance of a mile and a half from the spot. The information given to the Rawagoung (witness No. 2, Moung-we) was, that deceased Chandabaw had been killed by thieves. Witness Thak-nyng-froo states that he believed then the deceased had been killed by thieves.

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Case of MROMA and another.

"That portion of the evidence of Thak-nyng-froo, which refers to the information of the murder of deceased given by prisoner No. 2, Moungola, and his wife, the witness Meer Chyn-yo, is fully confirmed by the witness No. 8, That-wyn.

"The Rawagoung, Mong-we, states, that he was awoke at night, and that prisoner No. 2, Moungola, the witness Thak-nyng-froo and three others, informed him that thieves had killed the deceased Chandabaw. Witness went to the spot and saw the body of deceased at the foot of the house ladder, with the face downwards, and much blood on the body. Prisoner No. 1, Mroma, said that thieves had cut her husband. They searched for the thieves, but could find no traces of them. She showed witness where her husband had slept in an outer apartment of the house, where there was blood on the mat, and spots of blood were visible in the outer verandah. Prisoner No. 1, Mroma, then stated that the thieves had stolen as follows :

Cash, rupees 35,	1 Plain Gold Ring,
1 Gold Diamond Ring,	1 Silver Bracelet,

1 Piece of Cloth.

"This witness conveyed the corpse to the town of Akyab, and gave information at the thanna, on the morning of the 17th October. Prisoner No. 1, Mroma, at the same time, deposed at the thanna to five men having entered the house at 9 P. M., of the previous night, seized her husband, the deceased, and herself, so that they could not call out, plundered the house of the articles above-mentioned, and wounded her husband so that he died immediately. The prisoner No. 2, Moungola, also deposed on the 18th of October, at the thanna, that on the night of the 16th, at about 9 P. M., his sister, the prisoner No. 1, Mroma, came to his house, and woke him up, saying that thieves had come and stabbed her husband, and that he then, with Thak-nyng-froo and That-wyn, went and found deceased's corpse, at the foot of the ladder leading up into the house.

"The darogah went to the village to inquire into the case, and remained there three or four days, but nothing was elicited to show who the murderers were.

"After the departure of the darogah, the Keok, or head revenue officer of the circle, witness No. 1, Kesfroo, continued the inquiry. He states in his evidence, that the witness Thak-nyng-froo first gave him information on the subject. But Thak-nyng-froo before this court states, he did not do so until after prisoner No. 1, Mroma, had confessed before the Keok, as he did not dare to say what he knew. This witness apparently wishes it to be understood that he did not believe the fact of prisoner No. 1, Mroma, having killed deceased, until he heard her confess it. The witness Keo-froo states, that from what he heard, he, on Wednesday, the 6th of the waxing moon Tatshoungmon (Octo-

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ber 29, 1851) asked prisoner No. 2, Moungola and his wife, witness Meer Chyn-yo, upon the subject of the murder, and they both informed him that prisoner No. 1, Mroma, had told them she had cut down her husband. The witness then asked prisoner No. 1, Mroma, and she, in presence of the Rawagoung, Moung-we, and several others, inhabitants of the village, acknowledged she had committed the murder. She also directed where the *dáo*, or long knife, with which she had committed the act, was to be found, and it was found from her direction, under her sleeping mat in the house of Kyouk-Phyoo, whose wife Mee-jyké, witness No. 15, is aunt to prisoner No. 1, Mroma, and to whose house prisoner had removed to live in after the murder. Prisoner No. 1, Mroma, also produced from her waist two of the articles she had before deposed had been stolen, namely, a gold ring set with diamonds, and a plain gold ring, also rupees ten cash. A silver bracelet, which the witness Keo-froo stated had been taken from her waist and given up by prisoner No. 1, Mroma, it appears, from the evidence of the above witness No. 15, Mee-jyké, was also found under prisoner Mroma's sleeping mat, and she (Mee-jyké) gave it to the witness No. 14, Swé-lha-ong, when he came to demand it, together with the *dáo* and a piece of cloth. The witness Swé-lha-ong at first said, the silver bracelet prisoner No. 1, Mroma, had taken from her waist with the other things; but afterwards he stated that the silver bracelet had been delivered to him by the witness No. 15, Mee-jyké, and persisted in saying he had said this before.

"The witness No. 1, Keo-froo, after this open confession, apprehended the prisoner No. 1, Mroma, and brought her into the station on Thursday, the 30th of October 1851. The same day, her confession was taken, first before the magistrate and afterwards at the thanna. In the first she stated that she, on the night in question, had killed her husband while he slept, with the *dáo*, or knife produced. She also stated that her husband desired to remove to the circle of Pinnay Khy-oung; that she was unwilling to go; and that he had therefore beaten and oppressed her; that not being able to bear the life they led, and as her husband was a seller or compounder of medicines, and had frequently said he would kill her sister with drugs by means of sorcery, so from fear she killed him. The same day at the thanna, she also fully confessed, and stated that after the deceased was dead, she told her brother, the prisoner, Moungola, what she had done, and that she also told the witnesses Thak-nyng-froo and That-wyn. This confession is stated at the head of it to have been taken at 4 P. M. of the 30th October 1851, but the witnesses to it state it was taken by candle-light, and apparently after the confession before the magistrate, which was recorded between 5 and 6 P. M. of the same day.

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Case of MROMA and another.

"At the thanna, the prisoner No. 2, Moungola, on the 31st of October, stated that on the night in question, his sister, prisoner No. 1, Mroma, had come to his house about midnight, and said she had killed her husband Chandabaw; that he called Thak-nyng-froo and That-wyn, and told them what had happened. That-wyn went to call the neighbours, and he and Thak-nyng-froo went up to the body; that before the neighbours arrived, prisoner No. 1, Mroma, called out, the thieves had killed deceased, and stolen the property, and that he, (prisoner,) only repeated to the Keok, Rawagoung and darogah, what the prisoner No. 1, Mroma, had afterwards said relative to the thieves.

"Before the magistrate, prisoner No. 2, Moungola, was examined on the 12th of November. He then stated that prisoner No 1, Mroma, had told him at first that thieves had killed her husband, and his confession at the thanna was given, because the Keok Keo-froo, the Rawagoung Moung-we and the Rawatsagaing Oung-zan-ye, had frightened him and prompted him to say what he did.

"Before the sessions court, prisoner No. 1, Mroma, in her defence, denied having confessed at the thanna. She stated she did confess before the magistrate, because the Keok Keo-froo and others instigated her to do so; that the confession was not a true confession of her own will and accord, and that she was innocent of the crime charged. Prisoner No. 2, Moungola, in his defence stated that a great deal more than he said was written down at the thanna, and that he confessed there because he was frightened, and was prompted by the Keok to say what he did. The prisoner called no witnesses.

"The body of the deceased was examined by the civil surgeon Mr. J. W. Mountjoy. That gentleman states in his evidence, that there were three wounds on the head, one of which, on the occiput, which was fractured, was of itself sufficient to cause death. The head had also been nearly severed from the body by repeated blows, and the back was one mass of shocking wounds. The whole of the wounds, the civil Surgeon stated, were such as might be caused with a *dáo* such as that produced. The *dáo*, or knife in question, is of the usual kind and shape in use in this province. The blade is one foot and half an inch long, and the wooden handle eleven inches and a quarter. It weighs a little more than one seer and a quarter.

"No adequate apparent cause or motive has been traced in evidence sufficient to account for the perpetration of the murder by the prisoner No. 1, Mroma. But the witness No. 13, Meer Chyn-yo, the near neighbour and sister-in-law of the prisoner, states that the prisoner No. 1, Mroma, has told her, the deceased called her (prisoner) to change their residence, and threatened

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her with death by sorcery or drugs, if she did not follow him. This cause of dissatisfaction with her husband was stated by the prisoner Mroma, before the magistrate and also before the thanna darogah, and it is confirmed by the witness No. 9 Krang-phoree, who is prisoner's uncle.

"After considering the whole of the evidence, and what has been urged by the prisoners in their defence, I am of opinion that prisoner No. 1, Mroma, is guilty of the murder of Chandabaw, her husband; and that prisoner No. 2, Moungola, is guilty of being accessary after the fact to the murder of the said Chandabaw. It may appear surprising and almost incredible, that a small and apparently weak female, such as the prisoner No. 1, Mroma, is, should be capable of inflicting the deep and deadly wounds described by the civil surgeon. But the women in the villages in this province are generally employed in cutting up fire-wood for domestic use, and they thereby acquire a great facility in using a *dáo*, or long heavy knife. The habit of pounding paddy with a heavy pestle, in a large wooden mortar, also gives them considerable strength in the arm. The crime which has been proved against the prisoner No. 1, Mroma, appears to me to be without any palliating circumstances, and I would beg to recommend a capital sentence. For the prisoner No. 2, Moungola, I would recommend imprisonment for life in transportation beyond seas."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart: and Mr. A. J. M. Mills.)—MR. A. J. M. MILLS.—"It was reported to the police, that the deceased had been murdered by thieves; the usual investigation was made by the darogah, but nothing further was revealed. The magistrate seeing reason to suspect the truth of the story set up by the prisoner Mroma, ordered the Keok, or head revenue officer of the circle, to make more searching inquiries on the spot; the result was, that the witnesses Thak-nyng-froo, That-wyn and Meer Chyn-ye disclosed the real facts of the case, and the prisoner Mroma, on being interrogated by the Keok, acknowledged that she had committed the murder. The evidence of the above witnesses, who stated before the darogah that the deceased had been murdered by robbers, and who now depose, the two former to the prisoner Moungola telling them that Mroma had killed her husband, and the latter, to Mroma herself telling her she had wounded her husband, is to be received with caution; but it consists with the facts of the case, and I do not see any sufficient reason for rejecting it. I think their failing to inform the darogah of the real facts, may be attributed to fear. The confessions of the prisoner first before the magistrate, and subsequently before the darogah, have been proved to have been freely and voluntarily made, and her statement that thieves killed her husband has

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been fully negatived by her producing the very property she alleged had been carried off, amongst which were two rings, a gold diamond ring, a plain gold ring and a silver bracelet. The knife too with which she committed the murder, was found, from her indication, under her sleeping mat. The charge in my opinion is fully proved against her. The motive for the deed seems to have been ill-treatment, and fear of her husband carrying out his threats to kill her by means of sorcery; but it cannot justify the commission of this most deliberate and savage murder, and I am of opinion she should, as recommended by the commissioner, be sentenced capitally. I do not concur in the conviction of the prisoner Moungola as an accessary after the fact. There is no evidence that he did any act to assist the felon personally. The only offence established against him is, that he, like the witnesses above-mentioned, did not reveal to the police the real facts of the case; but he may have had doubts of the truth of the prisoner's first story, and from fraternal affection forbore to disclose it. I would acquit the prisoner."

SIR R. BARLOW.—"I have no doubt that the prisoner No. 1, Mroma, murdered her husband. The fact was not at first known, but on a stricter inquiry being made, she confessed the deed in the Mofussil and before the magistrate, and also gave up property which was on her person belonging to the deceased, which she had before stated was carried off by the thieves, who she, in the first instance, alleged had killed her husband. I see nothing extenuating in the case, and concur with Mr. Mills in sentencing her capitally.

"The prisoner No 2, Moungola, went to the witnesses Thak-nyng-froo and That-wyn, as they deposed, and told them that he had heard from Mroma that *she* had killed the deceased. Moungola, on the other hand, says he told them that she had said some *thieves* had committed the murder. Under the circumstances of the case, I do not think the charge of accessaryship is proved against the prisoner. I concur in his acquittal."

PRESENT:

J. R. COLVIN, Esq., *Judge*.

GOVERNMENT

versus

MUSST. ZEREA.

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Case of MUSST. ZEREA.

Prisoner convicted of exposure of her infant child, with intent to destroy it, from which exposure the death of the child ensued, and sentenced to imprisonment for life in the district jail, with labor suited to her sex, in accordance with the precedents of the court, especially the case of Musst. Bowal Bewa, Nizamut Adawlut Reports, Vol. II. page 220.

CRIME CHARGED.—Wilful murder.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. H. V. Hathorn, sessions judge of Sarun, on the 13th December 1851.

Remarks by the sessions judge.—" The infant child of the prisoner was found by Musst. Munia (of the village Muharajgunge) on going out to the field, early in the morning, for a necessary purpose. She took the child home with a view to its support, and informed the chowkeedar, but the child died the same evening, it having been exposed, as it afterwards was ascertained, about five hours.

" The mother of this illegitimate child was traced, having been recognized previously as being with child. At the thanna two days afterwards, she admitted having thrown her offspring away. Before the officiating magistrate of Sarun, she confessed having placed the child at night time in some *poal* or straw in the field where it was found, upon the plea that she had not the means of rearing it up. Before this court she again admitted having exposed the child, but pleaded for the first time that it *was dead.* It was further stated by Musst. Munia, who found the infant, that the leg and arm of the child were broken when she first discovered it, and a broken *telia* or earthen vessel was on one side, and that the prisoner had confessed before her of having attempted to thrust the child into this vessel, but had failed. The Dusad, Kuntee, also observed the broken leg and arm. The law officer found the prisoner guilty of culpable homicide, in which I concurred. The Sudder Court, in a nearly similar case tried in April 1849, Musst. Seftee, reduced the sentence of this court to two (2) years' imprisonment, but as I consider such a punishment inadequate to the offence, I have passed a sentence of five (5) years' imprisonment, with labor suited to her sex."

Remarks by the Nizamut Adawlut, dated 30th January 1852. —(Present: Mr. J. R. Colvin.)—" The court finding that the facts held to be proved in the case of Musst. Zerea, amount to legal proof of the charge of murder, annul the conviction of culpable homicide, and the sentence of five (5) years' imprison-

ment, with labor passed upon the prisoner on the 13th of December last, and direct that the trial be referred in the regular course." 1852. March 11. Case of Musst. Zerea.

Letter from Sessions Judge of Sarun to the Nizamut Adawlut, No. 32, dated the 21st February 1852.

"In obedience to the instructions contained in your court's letter No. 116, under date the 30th ultimo, I have now the honor to submit herewith the proceedings held in the case of Musst. Zerea, convicted by my predecessor on the 13th December last, of culpable homicide, and sentenced for it to five (5) years' imprisonment, with labor, &c.

"I also annex, for the information of the court, a copy of Mr. Hathorn's remarks upon this case, and with reference to them, have only to observe that it appears to me to be one of wilful murder, and not of culpable homicide, whereas the Moulvee convicts of the latter crime only. Under these circumstances, it becomes my duty (the sentence passed by Mr. Hathorn having been annulled), both on account of my dissent with the *futwa*, and on that of the court's instructions, to submit the proceedings for the orders of the court, and with reference to all the facts of the case, I recommend that the prisoner Musst. Zerea be sentenced to imprisonment for life with labor suited to her sex."

Final remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"In this case, there is proof of exposure with deliberate intent to destroy. The arm and leg of the infant were found fractured; and the first statement of the witness, Musst. Munia, by whom the child was discovered, was that the body was seen by her buried in the ground, the face only being apparent. These circumstances bring the crime under the aggravated sentence, which has been passed by this Court when there has been more than a mere abandonment of an infant in a spot where there was a fair chance of its being taken up and saved. See the precedents as cited under the head "Exposure of Infants", Index N. A. Reports, page 49. Following the precedent in the case of Musst. Bowal Bewah, Reports, Vol. II. page 220, I sentence the prisoner, Musst. Zerea, to imprisonment for life in the district jail, with labor suited to her sex."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

BHOROSY PANDE (No. 6), BUNDUN SINGH (No. 7), SUNKATADEEN TREBEDDY (No. 8), BALGOVIND SOOKUL (No. 9) AND ASHOREE CHOWKEEDAR (No. 10.)

1852. March 12.

Case of BHOROSY PANDE and others.

Insinuation of a crime having been committed by others, who have been secured by the police, when no information to that effect was given, during any stage of the inquiry in the zillah, and they are not even named in appeal, rejected, as insufficient reason to interfere with a sentence.

CRIME CHARGED.—Nos. 6, 7, 8 and 9, with the wilful murder of Bishen Churn Mojoomdar. No. 10, with knowingly and wilfully concealing the circumstances of the case.

CRIME ESTABLISHED.—Nos. 6, 7, 8 and 9, guilty of being accomplices in culpable homicide, and No. 10, guilty of concealing the circumstances of the culpable homicide.

Committing Officer, Mr. H. C. Halkett, magistrate of Backergunge.

Tried before Mr. W. J. H. Money, sessions judge of Backergunge, on the 12th December 1851.

Remarks by the sessions judge:—"The Government was prosecutor in this case. Prisoners No. 7, 8, 9 and 10 denied the charges on which they were arraigned. Prisoner No. 6 denied also in this court, but in the Mofussil he admitted having seen prisoners Nos. 8 and 9 and some others, whom he did not recognize, beat a drunken man near a tank, into which they afterwards threw him. Before the magistrate, he merely admitted having seen these persons pull about a drunken man, but whether they beat him he did not see.

"Witness No. 1, Bheary Patuck, deposed that on the night of the 18th Assin last, about 11 o'clock P. M., being moonlight, he saw prisoners Nos. 6, 7, 8 and 9 coming from the west, and a drunken man advancing from the east and abusing as he approached, upon which prisoner Balgovind Sookul struck the drunken man with a ruler he had in his hand, that he (witness,) interposed, but they did not attend to him, but all of them beat the drunken man with *lattees* and threw him into a tank near the jail; that he retired to his house and subsequently informed prisoner No. 10 of the occurrence. Witness No. 2, Rajbullub Karmakar and witness No. 3, Golam Alee Peadeh, deposed to the fact of the prisoners Nos. 6, 7, 8 and 9 beating a drunken man, whom they knew to be Bishen Churn, deceased, and their subsequently informing prisoner No. 10 of what had occurred, the former witness seeing the deceased's corpse the next day in the tank near the jail, with a wound on his head as if from a *lattee*. This witness mentioned the drunken man as coming from the west, the first witness describing him as coming from the east.

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Witness No. 4, Buxoo Khuleefa, deposed to prisoners Nos. 6, 7 and 8, whom he recognized, beating somebody on the night in question. Prisoner No. 9 he could only recognize by his voice. Witness No. 5 deposed also to the prisoners Nos. 6, 7, 8 and 9, whom he could only distinguish by their voices, beating somebody, and to his hearing that the deceased's corpse was found floating in a tank the next day. Witness No. 6, Sheikh Abbass, deposed to the prisoners Nos. 6, 7, 8 and 9 beating some one on the night in question, who was said to be very intoxicated and throwing him into a tank. Witness No. 7 deposed to the beating, but could only recognize prisoners Nos. 6, 7 and 9 by their voices. Witness No. 15, Bebee Pickett, and witness No. 16, Alee Bux, deposed to their hearing a noise on the night in question, the former witness distinguishing prisoner No. 7 by his voice amongst other up-country men, between whom and some drunken man angry words were being exchanged, the latter witness the next day seeing the deceased's corpse in a tank. Witness No. 17, Birmo Dutt Tacore, deposed to his having heard on the night in question, from witness No. 1, that some four or five persons had thrown a drunken man into a tank, and to his having informed the chowkeedar of the circumstance. Witness No. 18, Kishen Chytur Rae, was a friend of the deceased, who was in the habit of drinking, and deposed to his having been absent on the night in question, and to his corpse being discovered in a tank the next day, with a wound on the head and testicles, and marks of beating on the body. The evidence of witness No. 19, Kishen Singh Duffadar, and witness No. 21, Nowbux Khuleefa, was merely to the purport of their having heard of a corpse being found in a tank near the jail, the latter witness having heard a noise on the previous night. Witness No. 22, Edrok Chowkeedar, deposed to his having met the deceased on the night in question, about 9 or 9½ o'clock, though not intoxicated, yet smelling of liquor. The witnesses to the *sooruthal* deposed to a wound on the back part of the head of the deceased, one and a half finger long, and half a finger broad, a wound over the eye-brows and near the lip, both ears appearing as if eaten or cut; a wound on the testicles, on both legs below the knee, a small wound on the instep of the left leg, three small marks on the neck, like points, and blood flowing, apparently fresh. The uncovenanted assistant surgeon deposed, that there was an incised wound on the back of the head of the deceased, which indented the skull, and upon opening the skull, he found a quantity of black congealed blood extravasated upon the membranes and surface of the brain which was the cause of his death. There was a portion of the scrotum cut away, as also the tips of the ears,—these latter wounds must have been inflicted by some sharp cutting instrument, such as a knife or razor.

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"The wound on the back of the head was considered as being inflicted by some heavy instrument, such as a ruler bound with brass. There were no other symptoms of disease, and the surgeon was of opinion that the wound on the scrotum could not have occasioned the death of the deceased. He further observed that from the freshness of the corpse and the blood when he examined it, he was of opinion that the deceased could not have been dead more than eight hours when he saw him. Prisoner No. 6 cited no witnesses. Prisoners Nos. 7, 8 and 9 cited witnesses to prove an *alibi;* prisoner No. 8, moreover, being sick at the time of the occurrence alluded to.

"Prisoner No. 10 cited witnesses to prove his innocence, but nothing was elicited in his favour. Prisoners Nos. 6, 7, 8 and 9 gave petitions, complaining of the police, who had not made proper inquiries in the case. Prisoner No. 10 again urged his innocence and denied his having seen anything amiss on the night in question.

"One juror acquitted the prisoners, another considered prisoners Nos. 6, 7, 8 and 9 guilty of beating the deceased, and prisoner No. 10 guilty of concealment; a third juror considered prisoners Nos. 6, 7, 8 and 9 guilty of homicide on violent presumption, and prisoner No. 10 of concealment of the crime. I considered prisoners Nos. 6, 7, 8 and 9 guilty of being acccomplices in culpable homicide on violent presumption, and prisoner No. 10 of concealment of the crime, and sentenced them to punishment accordingly."

Sentence passed by the lower court.—Nos. 6, 7 and 8 each to be imprisoned without irons for four (4) years and to pay a fine of rupees (100) one hundred in lieu of labor within seven days, or, in default of payment, to labor until the fine be paid, or the term of their sentence expire. No. 9 to be imprisoned for four (4) years without irons and to pay a fine of rupees (200) two hundred in lieu of labor within seven days, or, in default, to labor until the fine be paid, or the term of his sentence expire, and No. 10 to be imprisoned for six (6) months without irons and to pay a fine of rupees (25) twenty-five in lieu of labor within seven days, or, in default of payment, to labor until the fine be paid, or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.—"The prisoners Nos. 6, 7, 8 and 9 have appealed and appeared in this court by vakeel. Their vakeel urges that there are discrepancies in the evidence of the eye-witnesses, and that the police did not turn their inquiries as they ought to have done to the circumstance of some blood being found on a pillow-case of the witness Bebee Pickett.

"The discrepancies which have been pointed out are of a very immaterial nature, and throughout the inquiry into the case, nothing came out to lead to a supposition that the deceased met

his death from the hands of others than the parties accused. The crime was committed in the station of Burrisaul, and this being the case, it is unlikely that it could have been falsely represented to the courts there to have been perpetrated by one party, while it was really so by another, as is now insinuated.

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" The prisoners have been convicted on full proof, and there is no reason to interfere with the sentence."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

SHICKDAR MUNDLE

versus

HYAT MUNDLE (No. 1), MEECHOO HAZAM (No. 2) AND BUXOO SHEIKH (No. 3).

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A conviction of certain prisoners of dacoity, considered to have been had on insufficient proof, and the prisoners released in consequence, on their appeal.

CRIME CHARGED.—1st count, dacoity with torture, and 2nd count, knowingly receiving plundered property.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. A. Littledale, magistrate of Rajshahye.

Tried before Mr. T. Taylor, commissioner of the 14th division, Rajshahye, on the 13th December 1851.

Remarks by the commissioner.—" This case was committed by the magistrate of Rajshahye and tried under Act XXIV. of 1843. The prosecutor states that his house was attacked by a band of about twenty or twenty-five dacoits with lighted *mussals* about midnight of the date charged, and on their proceeding to burn him with their torches, he pointed out his property, which they carried off, amounting in all to about rupees 139-6-10. A reward of rupees 100 was offered for the conviction of the parties concerned, and this induced a man by name Hâfiz *kuberaj* to come forward, on whose deposition and that of Sona Aurut, wife of the prisoner No. 3, the prisoners were apprehended. This man Hafiz, I have no doubt whatever myself was one of the dacoits himself, and he has so distorted his evidence to prevent it appearing to be the case as to run the risk of his evidence being altogether rejected, had it not in a measure been supported by the other witness Sona. He states that he was professionally called upon to attend the sick child of the prisoner No. 2, where he met with the three prisoners, who all live in the same neighbourhood, and others, who proposed to him to commit a dacoity in the prosecutor's house; but that he declined, and the prisoners then left with ten or twelve others, and returned the next morning with the spoils.

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He states that up to that time the prisoners were strangers to him, which is the portion of his evidence which I allude to as throwing a doubt upon it; but this is denied by the prisoners themselves, who know him well, as also by the witness Sona Aurut. She states that two days previous to the dacoity, the witness Hafiz himself came to the house of the prisoner No. 2, and said he knew of a house where there was a *kulsee* full of rupees, and if they could collect nineteen men or so, they might plunder it; that on the following day, the prisoners Nos. 1, 2, Hafiz and several others (named by the witness) assembled and sallied forth, and did not return till the following morning, when she heard they had committed a dacoity at the prosecutor's. On the houses of the prisoners being searched, six brass plates, a silver *hunslee* and a new blanket were found, which the prosecutor claimed; and his witnesses have sworn to them as his property. The prisoners have denied throughout, and claim the property as their own; but which they have been unable satisfactorily to establish. The prisoner No. 1, indeed, has not attempted it. One witness swears to one brass plate (out of two found) as belonging to the prisoner No. 2, and two witnesses *think* they have seen one of two found belonging to the prisoner No. 3; but they admit they never saw it but once, when they went to realize a debt from the prisoner, and the latter being a debtor of one of them, it would clearly be his interest to keep the prisoner out of jail. Their defence, therefore, I do not consider established, and being satisfied with the evidence for the prosecution, I have had no hesitation in convicting them as in the foregoing column. The prisoner No. 1 was once before apprehended in a case of dacoity and acquitted."

Sentence passed by the lower court.—Each seven (7) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The proof in this case consists of the depositions of Hafiz, the informer, and Sona, the wife of Buxoo prisoner, and the finding of some property identified by witnesses as belonging to the prosecutor, in the houses of the prisoners. The witness Hafiz *kuberaj* deposes that the prisoners (previous strangers to him) proposed to him to join in the dacoity while he was attending a patient; that he refused, so they went without him and returned next morning, when he saw them divide the spoil. This evidence is improbable, and cannot be trusted. The evidence of Sona makes the preceding witness appear as the procurer of the robbery and is also to the effect of certain persons (prisoners Nos. 1 and 2 among them) going forth at night and returning in the morning with some spoil; but what spoil she knows not. Her husband Buxoo was not of the party.

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"The property produced at trial as that of the prosecutor, was as follows:

"From the house of Hyat,	.. ..	2	*Thals.*
		1	Blanket.
Ditto, ... Meechoo,	..	2	*Thals.*
Ditto, ... Buxoo,	..	1	Ditto.

and, on his wife's neck, one *hunslee.*

"The prosecutor says that his sight is dim and he can only recognize the blanket as his own. Some of his neighbours, however, swear that the rest are his. They say that they know one of the *thals* by a mark on it, but in which prisoner's house it was found, is not mentioned in the papers. The above articles were found in no way concealed. The prisoners claim them as their own; Buxoo's wife was openly wearing the *hunslee,* and although she gives evidence against the two first prisoners, she does not admit that this was part of the spoil. The other articles are of very small value and almost incapable of identification. They are such as are in every villager's house. The proof against the prisoners is very weak, and in the opinion of this court, insufficient to sustain their conviction. The sentence passed against them is therefore annulled, and they are directed to be released."

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Case of JHUREE GOALA.

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

A. J. M. MILLS, ESQ., *Officiating Judge.*

MUSST. PUEREE GOALIN

versus

JHUREE GOALA.

Prisoner sentenced capitally for the premeditated and deliberate murder of a young boy, caused, as it appeared, by some feeling of family or personal hatred and malice. The sessions judge, though declaring the case to be one of deliberate murder, yet recommended a sentence only of transportation for life, as there were no witnesses to the act, and no *direct* evidence of the motives which led to it.

The Nizamut Adawlut could not, however,—the case being fully proved,—regard these as mitigating circumstances.

CRIME CHARGED.—Wilful murder of Person, boy.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 11th February 1852.

Remarks by the sessions judge.—"The deceased, the prosecutrix's son, a boy of about eleven years of age, in company with two other boys, Moosun and Pirtoo, on the morning of the 27th December last, had charge of buffalo calves on the plain, some seven *russees* distant from their village of Hurdown. Moosun

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and Pirtoo were the only eye-witnesses to the tragic and merciless deed; but their youth and ignorance of the obligation of an oath prevented their examination before this court. Before the police and magistrate they stated that the prisoner suddenly attacked the deceased with a sword, Pirtoo mentioning that he came upon them unawares concealed by the *ruhur* fields. They ran off to the village, and gave the alarm through Panchoo Goala, the chowkeedar, (witness No. 13);—Oogur Goala, (witness No. 3), Dial, (witness No. 4) and Mungur, (witness No. 5), who happened to be employed in their fields, pursued the prisoner running off with a naked sword in his hand into a jungle near the village, where, about a mile distant, the jungle being extensive, they succeeded in capturing him, after a show of resistance.

"Witnesses Nos. 13, 3, 4 and 5 depose to the foregoing particulars.

"The body was found lifeless on the spot where the attack took place, unmistakeably verifying the determined violence of this cruel murder, there being, as deposed to by Dr. Diaper, 'three incised wounds, two dividing the skull and the brain 'throughout half their extent, and the third completely dividing 'the vertebræ of the neck and spinal marrow. Death must 'have been instantaneous. The left hand was nearly cut in 'two.' The Mofussil inquest also notes slight wounds on the right hand, so that, in all probability, the helpless little victim did his best in the hopeless attempt to save himself.

"The prisoner, a robust, but ill-looking youth, above twenty years of age, before the police the same day confessed to his having fetched a sword from his house and committed the murder, assigning no other motive than sudden impulse, and that it was his fate to do so. Before the magistrate, on 2nd January following, he at first confined himself to a denial. It was not until questioned that he set up the plea of his having been intimate with one Musst. Etwarrya, which Choolia Goala having discovered, he attacked him (the prisoner) with a sword, and in the act of striking him killed the deceased; but he was at the same time unable to account for the unquestionable repeated wounds on the head and neck, any one of which was mortal. He attributed his confession to Panchoo (witness No. 13), as also his having put the blood-stained sword into his hand. He adheres to much the same story before this court; but with a marked and important contradiction. Before the magistrate he said Choolia's attack on him took place in the Lilajun Nuddee, before this court in the jungle. He called several witnesses, both before the magistrate and this court, but one and all denied all knowledge of anything in his favor.

"The *futwa* of the law officer convicts the prisoner of the wilful murder of Person, boy, on his confession, his flight from

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the spot, the pursuit, and his capture immediately afterwards with the blood-stained weapon in his hand, and declares him liable to punishment capitally by *kissas*.

"As explained, the evidence of eye-witnesses to the fact is not available, but what followed is consistently deposed to, seems natural, and is circumstantially corroborated. A line of *ruhur* cultivation appears to have extended from the village itself close to the place where the children were tending the buffalo calves, at times often kept separate from the herd under charge of children. Screened by this cultivation, the facility for the prisoner's sudden attack stands accounted for, as it does at the same time his having cunningly watched for the occasion, and as deliberately, with malice aforethought, after having armed himself with a sword, walked a distance before committing the murder. The prosecution is as silent as the original confession itself in assigning the slightest motive for such a pitiless crime. The prisoner's subsequent incredible, inconsistent, and unsupported pleas, affording internal evidence of manifest fiction, and in themselves contradictory, yet furnish some clue to a probable motive, which, though indistinct too, only leaves the act a still more diabolical one. Unexplained, it looks the act of a madman; but no supposition of this nature is warranted either by the prisoner's previous character, or his bearing before the police, the magistrate, and this court. He seems in full possession of his faculties, both mental and physical. He is nearly related to the prosecutrix, Panchoo, (witness No. 13) and his son, Mungur Goala, (witness No. 5). Only two other residences intervene between the prosecutrix and the prisoner's dwellings. The prosecutrix is a widow and had two sons, Choolia by a former husband, married two or three years ago to Musst. Etwarrya, and the deceased by her second husband. The prisoner is also married, but his wife will not reside with him. So much prevarication and concealment has been attempted by the prosecutrix and Panchoo, (witness No. 13), regarding Musst. Etwarrya, both at first pretending they did not know such a person, although more candidly explained by Mungur, (witness No. 5), that it gives some coloring to the plea set up by the prisoner, that some intrigue or jealousy originating about Musst. Etwarrya must have existed, and to the supposition of its having caused the prisoner to revenge himself on the prosecutrix and her family by murdering the defenceless little boy, when he dare not attack Choolia himself. Choolia appears to have been absent from home at the time of the occurrence. This is confirmed by the prisoner's own witnesses when unexpectedly examined on this point. Choolhuria (witness No. 14) replied that he was alone with Choolia in the jungle; and the remaining witnesses' answers in this repect were consistent, and given with every appearance of truthfulness.

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"Thus viewing the case, I cannot regard the murder other than a most wilful and diabolical one, deliberately and causelessly committed on an unoffending, helpless victim, and I can find nothing to urge in arrest of capital punishment; but the absence of eye-witnesses to the fact, and any direct evidence of the motives which led to it, interpose. It has been remarked that the 'particulars of external situation and conduct will in 'general correctly denote the motive for a criminal action;' but anything certain in this respect is wanting in the present instance. I would, therefore, sentence the prisoner to transportation beyond sea for life, a punishment in itself, at his age more particularly, falling little short of the extreme penalty due to such a crime."

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.)—MR. A. J. M. MILLS.—"There is no room for doubt in this case. The prisoner deliberately murdered an unoffending little boy, doubtless to revenge himself upon the prosecutrix and her family; but whatever was the motive of the act, whether jealousy or any other vile passion working upon a base and unworthy temper, I do not think that any other than a capital sentence should be passed upon the prisoner. He is twenty years of age; and youth can never be admitted as a palliation for the inhuman deed committed by him."

MR. J. R. COLVIN.—"This is a case of premeditated and deliberate murder, caused doubtless by some feeling of family or personal hatred and malice. The absence of clear proof of the motive to such a crime cannot be admitted as any ground for mitigation of punishment.

"I must concur in the capital sentence proposed by Mr. Mills."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

MUSST. JOWHUREE

versus

GOONDUR SINGH.

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Case of GOONDUR SINGH.

The court, in concurrence with the sessions judge, and in dissent from the assessors, acquit the prisoner charged with wilful murder, deeming the evidence too weak and suspicious to justify conviction.

CRIME CHARGED.—Wilful murder.

Committing Officer, Mr. H. Doveton, deputy magistrate of Mudhypoora, Purnea.

Tried before Mr. D. Pringle, sessions judge of Purnea, on the 16th December 1851.

Remarks by the sessions judge.—"The prosecutrix who states her age at fifty, though apparently more, deposes as follows:—That on a Monday, in Kartick, during the Dewalee, the prisoner, a Rajpoot, came at noon to the house in which she and deceased resided, being widows of Bugwan, to whom deceased (aged forty) was first married, prosecutrix becoming his second wife on the death of her own husband; that the prisoner had been in the habit of visiting deceased for a month previously, and that day remained till the evening. Next day returning at three hours of the night with some plantains for the deceased, whom he now told to put on all her ornaments; who asked if she was to borrow more,—all she had, a gold nose ring, a silver collar, and a ring, being on her person. The prisoner on this threw a common cloth over her, and took her in an easterly direction by the bank of the dry *nullah* towards Beerpore; deceased observing, you are taking me away, and will bring me into trouble. To which prisoner replied, how can that be, when such intimacy exists; that at midnight the prisoner returned, going to the house deceased had occupied, saying in reply to prosecutrix's inquiries, that she would come back at the last watch; who had then on a *lungotee*, and sheet concealing a sword in his hand, which the wind exposed; that at daybreak, deceased not appearing, prosecutrix informed the police, who accompanied her in the direction of Beerpore, the body being found under the chilownee mangoe tree, half a *coss* to the north of the village; that the prisoner, on being apprehended the fourth day after, at mouza Katarah, gave his name as Dheer Singh; the night she adds was dark during the first watch, after which moonlight; who having further stated before the deputy magistrate that the prisoner was accompanied on the night in question by Sri Narain Rajpoot (there discharged.) She was here interrogated as to this, which she accordingly repeats; but with some variation as to who had the sword, and in other particulars.

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"The first witness, Lala Pasban, was returning to the village from his field at a watch and a half of the night, on a Tuesday in Kartick, when he saw the next witness Kooskee grazing his cattle in a paddy field, for which reproving him, he proceeded to the north, in which direction there was a mangoe tree. When thirty cubits off, he saw three persons, a man seated on the chest of a woman, and another sitting by, the woman exclaiming 'O Goondur Singh let me go, my life is going', who replied, 'I will not let you go, I will take your life.' It was moonlight, by which a naked weapon was visible on the ground to the right of Goondur Singh, the other individual being seated a cubit off, who said, 'kill her.' Witness did not previously know Goondur Singh, though he now identifies him as the individual who was above the woman, his head being covered by a chintz sheet, but his face exposed. Witness again states that had not the woman so addressed the prisoner by name, he could not thus have identified him. Seeing a murder was being committed, he fled from the spot. The nearest house, he adds, is that of Byjnath, (witness No. 10), two *beegahs* off.

"Kooskee at the same time saw the three persons, as above described, and heard the woman's exclamation addressed to Goondur Singh, from which he knew that it was the prisoner. Witness did not hear the third individual say anything; but he saw the weapon lying on the ground opposite them. Again, that his deposition before the deputy magistrate is correct, as he heard the third individual say 'kill her.'

"Manik Chowkeedar, when on his rounds, in the first watch of the Tuesday night, saw the prisoner accompanied by deceased, proceeding eastward, both of whom were previously known to him, an intimacy having for some time existed between them. The night was then dark. They were about ten *cottahs* distant from witness, and not further from the house of the deceased. He did not observe if the prisoner had a sword; that he would have given information of this to the police, but the prisoner's relations, also Rajpoots, intimidated him, saying he would be imprisoned if he did so.

"Powah, at a watch of the Tuesday night, when on the bank of the tank, twenty-five *beegahs* to the west of deceased's house, saw a woman and two men proceeding from east to west ten or twelve cubits off, it was moonlight; the man in front being tall, who was unknown to witness, the woman following and the prisoner coming last; deceased and prisoner being well known to him; deceased was crying, and saying, 'Goondur Singh, 'let me go, I will go home,' who replied, 'No, you have got 'my rupees, and shall go where I go.' The prisoner had a cloth bound round his head; and a scarlet *dhotee*, and under his left arm a *dubbia* (kookree,) witness having no knowledge of the previous intimacy with deceased.

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"Mohun, when a watch of the Tuesday night had passed, was on a stage in a paddy field, a *beegah* to the north of the road, when he observed, to the west of the tank, a woman and two men passing, the first man tall, after him the woman, and the last man shorter; the woman saying, 'Goondur Singh, let 'me go, I will go home,' but witness did not hear the reply, nor did he observe if the prisoner had any weapon: who was before known to him, but whom he should not have recognized had not the woman so named him, she being unknown to witness.

"Byjnath was that night very sick in his house, two *russees* to the south of the mangoe tree. At the last watch he heard the cries of *bap! bap!* to the north; as to that stated before the magistrate of the first watch, Mr. Grey's bell had struck one, and immediately after he heard the cries.

"Jowahir is ferryman at the Ghera ferry, a *coss* to the north-west of the Chilownee mangoe tree. At midnight on a Tuesday, in Kartick, the prisoner, who was well known to him, coming to his *ghat*, begged to be conveyed across; but witness refused, being contrary to orders at that hour; who had then on a double sheet, but no weapon, only a stick.

"Chirkee knows of the prisoner having for two months visited Musst. Parbutee Dhanookeen, and of deceased one day forbidding her to receive his visits, after which the prisoner declared in the village that deceased should hear of it; this was before the Desserah.

"Koonjul to the prisoner so visiting Parbutee and to his openly threatening deceased for interfering.

"Jhoomuck, a Brahmin in the village, was present at search of prisoner's house, on the Thursday following, in which a *lungotee* and sheet found, the former washed. The double sheet here shown witness, exhibiting in two places stains as of blood attempted to be washed out; that the prisoner's sister-in-law, on the burkundauz bringing out clothes, said the sheet belonged to the prisoner, who was then at Kattareh, four *coss* distant, where he was apprehended.

"Kesree Singh Rajpoot, to finding of double sheet and *lungotee* as above; the former in eastern apartment, hanging over frame of grain kote, as if to dry; the last from western room, which the prisoner's sister-in-law was wearing, who said it belonged to the prisoner, on which there were spots as of blood attempted to be washed out; who said that the prisoner had left home on the Tuesday evening to procure necessaries, and had not since returned.

"Bustee Chowkeedar deposes, that on a Tuesday, in Kartick at noon, he saw prisoner and Sri Narain Singh conversing at the door of prisoner's house; that in the first watch of the night, he called to prisoner at his house, but got no answer, nor yet

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on the second or third summons; that on going to make his report next day at the thanna, he met Morie and Nunnoo Chowkeedars, who said a woman had been murdered under Sheikh Rustum Alee's tree, whither having accompanied them, they found the corpse of the deceased, with a deep sword wound on the left shoulder, from the neck downwards, another on the back of the head from ear to ear, there being blood on the ground, all round, on which they went to inform at the thanna. Totai Chowkeedar and Gunga Putwa first recognizing the corpse as that of the deceased, after which the prosecutrix came and identified it, who said that prisoner and another had taken away deceased; on which the prisoner's house was searched by the mohurir, when his brother Maharaj Singh said he had gone the day previous to Kattareh, but he was not found there by the chowkeedar sent to inquire.

"Sheo Raj Singh, that the prisoner did not remain at his house on the Tuesday night, but passed his door early on the Friday morning, going in a southerly direction; who said he could not stop, having business to do.

"Hurlal and Baboo Ram, chowkeedars, accompanied the burkundauz who apprehended prisoner in mouza Kattareh, in the house of Surubjeet Singh, prisoner saying he was a traveller, and giving his name as Dyan Singh, his brother Bikram Singh, who was with them, saying he was Goondur Singh.

"This closes the case for the prosecution.

"Before the police the prisoner stated as follows:—That he did not go on the Tuesday night to the house of the deceased. On the Saturday, he had gone there for rice, accompanied by Sri Narain Singh, which deceased did not give, bidding them return next day; on which seeing deceased going to Goolabgunge, he knew it was not ready; that he was in his own house on the Tuesday night, and cannot account for his sister-in-law and brother saying he was absent; that the *lungotee* and sheet there found so stained, were not his, as falsely stated by his brother; that he never fled, but went for service to Jankeenuggur, which he had not mentioned to any of his relations, setting out on the Monday, by the jungle road, and remaining on Wednesday and Thursday at Mohadebpore, not being at his own house, on the Tuesday, as first said, and that he never sought to cross at the Ghera Ghat on Tuesday.

"Before the deputy magistrate he states, that Sri Narain Singh was not with him when he went to the house of deceased on the Saturday; moreover, that he was not in his own house on the Tuesday night.

"In his defence here, that he and his sister-in-law do not live together, so he would not tell her if about to leave home; that at first he was ordered to be released on security by the

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deputy magistrate; that the darogah would have induced him to confess, on promise of escape, but on his refusal, the witnesses were detained until they gave evidence against him; that Sheo Raj Singh falsely declares he was not at his house on that night, as he was three days there.

"My assessors, recapitulating the heads of the circumstantial evidence, find the prisoner guilty of the murder, on violent presumption.

"I cannot place the same unhesitating reliance on the statements thus admitted, which present considerable difficulties. It appears to me while the whole case is yet involved in mystery, *first*, as respects the motive, there being none whatever apparent. The few ornaments the deceased wore could be no object to the prisoner; nor in such case would the murder have thus been proclaimed; that the deceased was a woman of abandoned character may certainly be inferred. In his report of the 26th October, the darogah states further, that she was a procuress, and had incurred the prisoner's ill-will by giving his mistress to another. But the proof of this is wanting; nor is it said that Musst. Parbuttee's is the case referred to. If such was her vocation, however, and her age gives colour to it, there is less cause of wonder at her murder, whether committed by the prisoner from revenge, or as the hired agent of another, on whose house she may have thus brought dishonor; *secondly*, the testimony of the eye-witnesses, Lala and Kooskee, must be regarded with some suspicion. The murder was committed on the night of the 14th October, yet no such evidence was elicited until the 30th; those witnesses at first denying all knowledge of it. Nor yet is it on such ground to be wholly rejected. They might fear to reveal what they had thus innocently become privy to, which may be regarded as the rule, and not the exception, on such occasions, in the Mofussil. It is to be noted, however, that Kooskee here first denied hearing the individual who sat by, utter anything, until reminded of that deposed to before the deputy magistrate, while Lala's minute recollection, or observation at all, of the colour of the prisoner's sheet, under the circumstances, is hardly to be credited; *thirdly*, as to the circumstantial evidence, it is certainly strange that the deceased should have been thus openly taken away by the prisoner and his comrade; yet more so that they should have returned to the house after committing the deed, unless it was with the intention of getting rid of the prosecutrix in like manner, to prevent her giving information, in which their courage might just then have failed them. The remark of the prisoner as to the ornaments, appears to me an addition of the prosecutrix to account for the murder: whose statement as to either the prisoner or Sri Narain having a sword, is opposed to the evidence of Powah,

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as to a kookree being under the arm of the former. Then as to the anxiety so said to have been expressed by deceased for her safety, as the prisoner's reply would indicate, though seemingly mere banter on her part; for why was she to apprehend danger; she was not a girl to be so misled by the prisoner's promises, but of middle age, and too experienced to admit of such supposition, who must therefore have accompanied the prisoner willingly, to be employed, as may be inferred, on some disreputable service, that may, or may not, have required her to assume a garment so soiled for disguise. If such inference be just, much suspicion attaches to that deposed by Powah and Mohun, of her so imploring the prisoner, as they passed, to let her return home; at which time it is obvious, if she suspected foul play, she was yet secure in doing so. Nor was the evidence of those witnesses obtained until the 27th October. The statement of Manick, I next observe, as to its being then dark, is scarcely reconcilable with that of the witnesses who follow. The moon may just have risen when it would be comparatively dark, yet only a few minutes could have elapsed, before the party was next seen by Mohun and Powah, who declare it was then moonlight. Byjnath's evidence as to the time of hearing the cries from the direction of the mangoe tree, varies, it is seen, from that given before the deputy magistrate. It does not appear how that of Jowahir Manjee was obtained, and this not until the 30th October. It is wholly improbable that the prisoner would afterwards hang his *lungotee*, a mere rag, in his house to dry; to which, if his sister-in-law spoke the truth, he never returned that night to do so. It might be that the witnesses Bustee and Manik were intimidated, and thus prevented during a whole fortnight from disclosing what they have now deposed to; but as the darogah was on the spot, their collusion would be the more probable inference, in which case yet greater suspicion attaches to their statements, when interested to clear themselves under such imputation. The strongest evidence against the prisoner is that furnished by his own answers, coupled with the attempt to conceal his identity by assuming a feigned name.

"In conclusion, while I record a verdict in concurrence with that delivered by my assessors, it is with the view of this important case being submitted to the higher court, that on review of the objections which I have thought it my duty thus prominently to bring to notice, they may exercise their judgment in confirming or setting aside such verdict."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—" Strong as the suspicion is against the prisoner, I agree with the sessions judge in placing no kind of confidence on the direct evidence relied on by the assessors.

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"The proceedings of the police, in the investigation of the case, are of a very suspicious character. The mohurir of the thanna arrived at the scene of murder on the 15th of October. The darogah followed, and on the 19th sent in the prisoner to the deputy magistrate. In his report of that date, after stating that he could obtain no evidence in corroboration of prosecutrix's statement, though he *had coaxed the prisoner* to disclose all he knew respecting the matter, he requests the deputy magistrate to issue an order on the zemindar to cause the attendance of all the *ryots* at the thanna, and solicits permission to *detain* them *there* until they should reveal the real facts of the case. The zemindar was required to afford assistance to the darogah in his investigation, and on the 27th of October, the darogah reports he had found two witnesses who had seen the prisoner, the deceased, and another person in company on the night of the murder, and was looking out for eye-witnesses to the *actual murder*. The two witnesses who depose to this fact were forthcoming on the 30th. It does not appear how it became known that these witnesses were cognizant of what they depose to, nor is their silence for so long a period in any way accounted for. They are ignorant cow-keepers, and the above stated facts, taken with the obvious improbabilities of their statements, lead to the supposition that they were procured to patch up a case which was deficient in proof. The evidence too of the two chowkeedars, Manick and Bustee, is at variance with the depositions they gave in the first instance. They then stated they knew nothing of the matter. Considering the evidence too suspicious to justify conviction, I acquit the prisoner and direct his immediate release."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge*

BISHNEE FOTEDAR

versus

TOTAI CHOWKEEDAR (No. 3), HUNWANEE CHOWKEEDAR (No. 4), KESUREE (No. 5), GUNGA (No. 6), MOHUN (No. 7), HAREESUR (No. 8), BHEKHA (No. 9) AND BODHAI (No. 10).

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The conviction and sentence passed upon seven prisoners, on a charge of burglary and theft, upheld by the Nizamut Adawlut. One prisoner was acquitted, the evidence being insufficient to justify conviction. The court remark on the careless manner in which the case was investigated by the sessions judge, and notice the omission to enter upon the record the despatch of property, prescribed by Clause 10, Section XVI. Regulation XX. of 1817.

CRIME CHARGED.—1st count, Nos. 3 to 10, burglary and theft of cash, jewels and wearing apparel, valued at rupees 512-8-0, belonging to prosecutor; 2nd count, Nos. 3 to 9, accessaries before and after the fact; 3rd count, Nos. 3, 5, 7, 8 and 10, having in their possession part of the stolen property of prosecutor, valued at rupees 93-10-0, knowing the same to have been acquired by burglary and theft, and 4th count, Nos. 3 and 4, concealing the above crime; Nos. 3 to 10 privity to the above crime, and No. 6 having in his possession suspicious property, valued at rupees 4-0-0.

CRIME ESTABLISHED.—Burglary and theft of cash, jewels, and wearing apparel, valued at rupees 512-8-0.

Committing Officer, Mr. H. Doveton, deputy magistrate, with powers of magistrate, of Mudhypoora, Purnea.

Tried before Mr. D. Pringle, sessions judge of Purnea, on the 19th November 1851.

Remarks by the sessions judge.—"The prosecutor deposes to the theft as occurring on a night in Sawun last, by means of an entrance made in the wall of his house to the north, the darogah afterwards obtaining a clue to the perpetrators, as now committed to take their trial. The first witness, Jymehsh, saw the entrance made by the burglars, the prisoners Hareesur No. 8, and Bhekha No. 9, afterwards confessing their guilt to the police. Bhootee saw two entrances that had been so made, namely, from the north and south, also the chest which had contained the property, broken open and rifled; four days after which, the prisoners Nos. 8 and 9, and Hunwanee No. 4, confessed their guilt to the police. Jhoomuk and Rubbee depose to seeing the prisoners Kesuree No. 5, Mohun No. 7 and Bodhai No. 10, with Nos. 4 and 9, drinking at the house of No. 4, and overhearing them planning, from the other side of the mat division, to commit a theft in Gouspore, and to their then separating to join a feast at No. 9's house in mouza Burera, two *coss* off; Rubbee adding that the prosecutor's house in Gouspore was named by them for the robbery.

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"Of the prisoners, Totai, No. 3, with Nos. 4 and 8, make a full confession to the deputy magistrate; Gunga, No. 6, with Nos. 5, 7 and 10, to their complicity; No. 9 is uncle of No. 3, who pointed out the articles found in No. 3's house, the stolen property being found, as easily recognized, and clearly identified, in the houses or on the premises of all the prisoners. My assessors find all the prisoners guilty. In addition to being a chowkeedar, Totai, No. 3, had undergone imprisonment of a year for theft on a former occasion; Kesuree No. 5, of two (2) years, for the like crime; Mohun No. 7 of fourteen (14) years, in a case of burglary in which murder was committed. The sentence now passed on the prisoners having reference to such previous convictions; and in the case of Hunwanee No. 4, to his likewise being a chowkeedar."

Sentence passed by the lower court.—No. 3, seven (7) years' imprisonment with labor in irons, and two (2) years additional in lieu of corporal punishment, in all nine (9) years' imprisonment. Nos. 4 and 5 each seven (7) years' imprisonment, with labor in irons; Nos. 6, 8, 9 and 10, each five (5) years' imprisonment, with labor in irons, and No. 7, seven (7) years' imprisonment with labor in irons, and two (2) years additional, in lieu of corporal punishment, in all nine (9) years' imprisonment in banishment from the district.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners Kesuree, Bhekha, Mohun and Gunga have appealed. The case has been very carelessly investigated by the sessions judge. The evidence to the finding of the property in the possession of the prisoners Hunwanee, Hareesur, Bodhai and Mohun is so contradictory, the witnesses swearing to articles being found in the possession of one prisoner, which are shown by the despatch of the police officer to have been found in that of another; that had it not been for the confessions made by the above-named prisoners before the magistrate, in which they acknowledge the receipt of the stolen property, the case would have, as against them, broken down.

"The sessions judge has omitted to notice these grave defects. If the witnesses were unable, in consequence of the number and similarity of the articles, to swear that each article was the same as that found in their presence, the sessions judge should have sent for and examined the police officers who made the search, as to the identity of the property and the correctness of the darogah's despatch, prescribed by Clause 10, Section XVI. Regulation XX. of 1817, which after being attested should have, under the Circular Order No. 247, of Vol. I. been entered upon the record of the trial.

"The prisoners Kesuree, Bhekha and Mohun are implicated in the confessions of Totai, Hunwanee and Hareesur, as accom-

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plices in the burglary. The evidence to Kesuree and Bhekha giving up articles, proved to have been stolen and to belong to the prosecutor, from the places where they had concealed them, is strong and convincing. The admission of Mohun, before the deputy magistrate, that he was cognizant of the robbery after the fact, and received two silver articles, knowing them to be stolen, is conclusive evidence too of his guilt. I see no reason to doubt the propriety of the convictions in their cases.

"Against Gunga, who is not even named in the confessions, nothing is proved, except that Mohun resided in his house. One witness speaks to Gunga's taking out of the thatch five articles, which Mohun had concealed there, and *identifies the same*, and the other to Gunga producing the same number of articles, but does not swear to them, whereas it is proved by the darogah's despatch, that he only produced two articles; but apart from this discrepancy the darogah states in his report that the prisoner produced the articles at the *indication* of Mohun. The prisoner said he did not know when Mohun placed them there, and certainly I see no reason to infer from the above circumstance a guilty knowledge on his part. I acquit the prisoner, and direct his immediate release. The confessions of the prisoners who have not appealed have been duly proved, and I see no reason to interfere with the finding and sentence of the sessions judge in respect to them."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

GHYBOOLLAH alias CAUSSIM (No. 6), ALEEMOODIN (No. 7), MOOTBOOLLAH (No. 8), NOWGHAZEE MATBOR (No. 9), AUJOOLOODDEEN (No. 10), MAHOMED SHAMEL (No. 11) AND BOCHA GHAZEE (No. 12).)

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The Nizamut Adawlut in concurrence with the opinion of the sessions judge, convicted one prisoner of wilful murder, and sentenced him, under the circumstances of the case, to imprisonment for life in transportation. The court remarked on the insufficiency of the reason given by the sessions judge for not recommending a sentence to be passed upon the prisoner in the first instance. The court convicted the other prisoners of privity to the murder, not of accessaryship after the fact, deeming that it was not proved that they had rendered personal assistance to the felon, and passed upon them a mitigated sentence.

CRIME CHARGED.—No. 6, wilful murder of Dhya Bebee, wife of prisoner No. 10, and Nos. 7 to 12, accessaries after the fact in concealing the murder of Dhya Bebee.

Committing Officer, Mr. E. F. Lautour, magistrate of Chittagong.

Tried before Mr. S. Bowring, additional sessions judge of Chittagong, on the 14th November 1851.

Remarks by the sessions judge.—"The most material witness was Musst. Bejan (No. 1) who heard an alarm of murder given by her mother-in-law Dhya Bebee, and saw the prisoner Ghyboollah (No. 6,) stab her several times with a knife. Caussim (witness No. 2,) was with her at the time, and Bocha Ghazee the chowkeedar, No. 10, also came to the spot, and assisted her to bring Dhya Bebce to her house, where she died the following night. The reason assigned by this witness for the murder was that Ghyboollah, who had negociated his marriage through deceased about Sawun last, had become dissatisfied with his wife, and reproached deceased in consequence. The witness No. 1 further deposed that deceased had sometime before an attack of epilepsy. In this court she said that she had been told by a respectable resident (mautubur) of the village, to say that the death of Dhya Bebee was the consequence of epilepsy. The witness recognized a skull cap as the property of prisoner Ghyboollah, which, with the sheath of a knife or dagger, was found on the spot where the murder is said to have been committed. This witness is wife to the witness No. 12, Ghyboollah's connexion, and the prisoners are mostly connected with each other. The witness is *purdah nusheen*, seemed confused, and anxious to leave the court; but, excepting the contradiction between her statement as to the cause of death, here and in the Mofussil, there was nothing to throw a doubt on her evidence.

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"Caussim Alee (witness No. 2), about sixteen years of age, deposed to having been in company with Bejan No. 1, and generally corroborated her statement. He deposed also to a quarrel between Ghyboollah and Dhya Bebee, and to the prisoner No. 6 having admitted before him that the sheath of the knife or dagger was his property.

"Lochun Jogee and Shakir Alee, (Nos. 3 and 4,) also saw the prisoner No. 6 wound deceased. The latter witness also said that in the morning Dhya Bebee had told him that the prisoner Ghyboollah (No. 6,) had gone mad.

"Sonaram (witness No. 5,) deposed to having found the cap and sheath produced in court on the spot where the alleged crime was committed; and that Dhya Bebee had told him she had been wounded by Ghyboollah, who escaped after the murder. This witness was also one of the party sent to search for the prisoner. The witness was also told by Aleemoodin, prisoner No. 7, to say that Dhya Bebee died of epilepsy.

"Bocha Ghazee, chowkeedar, (witness No. 10,) heard the alarm given, and assisted in removing Dhya Bebee, when wounded, to her home. He deposed that Bejan, (witness No. 1), had told him that the prisoner Ghyboollah (No. 6), had committed the offence. This witness likewise said that the prisoners Nos. 7 to 10 had told him that Dhya Bebee had died of epilepsy.

"Someeoodeen (witness No. 12), deposed to having asked Dhya Bebee, previous to her death, if Ghyboollah had killed her, when she made a sign in the affirmative, and that he had been told by many persons (prisoner No. 9, Nowghazee, being particularly specified) to say that Dhya Bebee died of epilepsy.

"Mahomed Hossein, chowkeedar, (No. 10,) was sent for, the day after the murder, by Nowghazee, prisoner No. 9, and the witness No. 12, and told by them to report the death of Dhya Bebee of epilepsy, at the thanna.

"This witness was first examined in the foujdaree as a prisoner, and then sworn to the deposition, instead of a new statement being taken, an irregularity which has been duly noticed to the magistrate.

"Shumsher, No. 15, told the darogah that deceased had not died a natural death, and spoke to a conversation with the prisoners Nos. 7 to 10.

"Kurreemooddeen, No. 14, had been told by prisoners Nos. 7 to 10, to conceal the cause of death.

"Husunoollah, No. 13, prevaricated grossly, but deposed in the foujdaree to the above effect.

"The inquest on the body showed that there were marks of wounds, but owing to the reports of the principal inhabitants of

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the village, the body was given over by the mohurir for interment without being sent in for examination by the civil surgeon.

"A sheath of a knife or dagger, a skull cap, and a cloth worn at the time of death by deceased, and cut through as by stabs, were produced in court. There were slight stains on the cloth but it was admitted that it had been washed since the death of Dhya Bebee.

"The prisoner Ghyboollah, No. 6, confessed at the thanna, excusing the act on the ground of madness or drunkenness. Before this court and in the magistrate's he pleaded 'not guilty.'

"The other prisoners, Nos. 7 to 12, also pleaded 'not guilty.'

"All the prisoners called witnesses, but no point in their favor was established.

"The law officer convicted the prisoners, Nos. 6 to 10, of the crimes charged in the calendar, and declared Ghyboollah, No. 6, liable to punishment by *kissas*, and the others, Nos. 7 to 10, Aleemoodin, Mooteoollah, Nowghazee, and Aujoolooddeen, to punishment by *tazeer*, and acquitted the prisoners Nos. 11 and 12, Mahomed Shamel and Bocha Ghazee, for want of proof.

"The death of Dhya Bebee was reported at the thanna as having been caused by epilepsy, but the magistrate, on observing that the *sooruthal* noticed marks of wounds, directed the darogah himself to proceed to the spot, when it was attempted to explain that the deceased had fallen in her fit on a *tengra*, or bamboo fence. The eye-witnesses, however, declare that the deceased lay on the ground between two *tengras*, both at some distance from her, and swear positively that she was struck by Ghyboollah with a knife or some similar weapon.

"By the evidence of several witnesses, the prisoners, Aleemoodin, Mooteoollah, Nowghazee and Aujoolooddeen, caused the report to be made at the thanna, and circulated that the deceased died a natural death, thus rendering themselves liable to punishment as accessaries after the fact by concealing the murder. There was no sufficient evidence against Mahomed Shamel and Bocha Ghazee (prisoners Nos. 11 and 12,) who were accordingly acquitted. They live at a distance and merely repeated what they heard.

"There is some slight discrepancy in the evidence of the eye-witnesses; and in the first instance, before the thanna mohurir, who reported on the death on the 3rd September, all parties agreed in attributing decease to natural causes. Both Bejan and Caussim (witnesses Nos. 1 and 2,) appeared to have mentioned what they had seen to other parties (see evidence of Someeooddeen No. 12, &c.), but these as well as the others said at first nothing of the murder.

"The confession of the prisoner Ghyboollah (No. 6), at the thanna, ought, I think, to have more weight than is usually

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allowed to such documents. This prisoner is not an ignorant villager, but a private of artillery, on leave of absence, not therefore a man to allow himself to be influenced by the threats and promises of the police officers. He absconded at the time of the deceased Dhya Bebee's death, in a manner which he has not accounted for. There certainly does not appear to have been provocation to induce such a crime as murder, but a Mussulman does not generally hold the life of a woman very dear, and I am inclined to credit his confession at the thanna, that in a fit of drunkenness or madness,—for the expression may mean either,—he committed the offence. In this court the prisoner questioned his witnesses as to the state of his mind, but without result, and from no act or expression, either in court or reported by the police, does there appear to be sufficient grounds even for making inquiry of the civil surgeon in the usual manner.

"The evidence against the prisoner Ghyboollah, omitting the contradiction as to the cause of death, is strong. There does not appear to have been any quarrel whatever between him and any of the witnesses, such as to induce them to bring forward a false charge. On the contrary, they all appear friendly, and in the first instance endeavoured to screen him, while several of them and of the prisoners also are his relations or connexions.

"If the crime of murder be established, I do not think there can be a doubt that the prisoners Nos. 7 to 10 are guilty of concealing it, and these accessaries after the fact.

"After well weighing the evidence and the confession of the prisoner Ghyboollah (No. 6), at the thanna, I am of opinion that Dhya Bebee did not die a natural death, but that her decease was the consequence of the assault made on her by the prisoner, as deposed to by eye-witnesses.

"A case similar to that now referred (Government *versus* Casheenath Deo and Gourmohun Dass) was tried before me on the 23rd and following days of August, and disposed of by the court on the 16th October last. The police had in this last endeavoured to conceal the fact of the murder, and the witnesses had some of them been concerned years before, in a summary suit, though no particular enmity was proved. The case against the prisoners appeared to me stronger than the present one, but the fact that some witnesses had remained silent, and other persons retracted their depositions and confessions, weighed with the court, and an acquittal was the result

"If the above trial should be taken as precedent, these prisoners must also be released. In the meantime I have directed the magistrate to detain Ghyboollah No. 6, and to admit the others, Nos. 7 to 10, to bail."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I cannot admit the sufficiency of the reasons given

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by the additional sessions judge, for not recommending a sentence in this case. The fact that the evidence was discredited *in one case*, because some of the witnesses had remained silent and others had retracted their depositions, is assuredly no ground for rejecting evidence, though open to somewhat similar objections in another totally distinct case. Each case must be tried on its own merits, regard being had to the credibility, not to the species of evidence.

"The deceased was reported by the chowkeedar to have staked herself, by falling, when in a fit of epilepsy, on a fence of sharp pointed bamboos (called *tengra* in that part of the country) in a manner which caused her death the same night. The police mohurir held an inquest on the body, and crediting this story, as deposed to by the villagers, sanctioned the burial of the body.

"The magistrate deeming it impossible that the wounds described in the inquest report could have been occasioned by the woman falling against a bamboo fence in an epileptic fit, directed the darogah of the thanna to make a further inquiry into the occurrence, when the facts, as set forth in the judge's narrative of the case, were revealed.

"The darogah arrested the prisoner Ghyboollah on the evidence of Lochun Jogee, and Caussim, who, as well as the witnesses Bebee Jan and Shakir Alee, deposed to witnessing the murder.

"It does not appear how it became known that Lochun and Shakir Alee were eye-witnesses to the murder, and they say they told no one of what they saw. This is a suspicious circumstance, but it is not of itself sufficient to invalidate their testimony. The deed was committed in the day-time in a public place. It is proved by other evidence that these two persons were working in the field close by, and considering how very reluctant natives are to come forward and give evidence, in consequence of the privations and losses to which a protracted absence from their homes and occupation subject them, it is no matter of surprise that they concealed their knowledge of the fact.

"Then as to the statement of the two most material witnesses, Bejan and Caussim. The former is a connexion of the prisoner No. 6, and the latter is a servant of the prisoner No. 8. They both depose to seeing the prisoner Ghyboollah stab the deceased several times with a knife, and to their carrying her, with the assistance of the witnesses above-mentioned, to the house of the former. This statement is in direct contradiction of their former evidence as recorded by the mohurir, to wit, that the deceased died a natural death, but I think their suppression of the truth in the first instance, may be

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fairly attributed to the threats held out by the influential persons in the village, who had combined to hush up the matter and screen the offenders.

"There is no ill-will or quarrel between the four witnesses noted above and the prisoner, nor is there any colourable pretext for impugning their motives or throwing doubt or suspicion on their characters. Weighing, therefore, what is for, and what is against the credibility of their evidence, I certainly see no reason for rejecting it, particularly as it is strengthened by strong corroborative proof, *viz.*, by the confession of the prisoner before the police, by the fact of his flight from the village immediately the deceased fell, in a most unaccountable manner, by the declaration of the deceased that he killed her, and by the finding of the sheath of a knife, and a cap which belongs to the prisoner, at the place where the murder was committed.

"His confession is proved to have been made of his own free will and accord, and though little reliance is in general to be placed on Mofussil confessions, yet there is some weight in the sessions judge's observation that the prisoner is not the kind of person who was likely to be influenced by the threats and promises of police officers.

"It would have been more satisfactory had the body been examined by the surgeon, and the sessions judge had taken evidence to a fact stated by the magistrate, on the faith of the darogah's report, that the bamboo fence on which the deceased was said to have fallen was 'old, broken down and actually 'rotten,' so as to have removed all doubt as to the *possibility* of her death having been occasioned by her staking herself. It seems, however, to be far more reconcilable with probability that she should have been killed by the prisoner than that she should have accidentally staked herself.

"The prisoner makes no defence, and his admission, that he fled from the village because he was not in his senses, tells more against him than for him. After a most attentive consideration of the evidence, I concur in opinion with the sessions judge that the prisoner is guilty of the wilful murder of Dhya Bebee.

"The sessions judge recommends that the prisoner be imprisoned for fourteen (14) years, on the ground that there is no evidence of a premeditated violence, a measure of punishment which is, I think, altogether unsuited to one who has subjected himself to the extreme penalty of the law. It is true that no previous ill-will existed, but giving the prisoner the full benefit of his confession, which in the absence of other evidence it is but just to do, that under the influence of violent irritation arising from a previous quarrel, which, from an expression of the deceased, it may be presumed immediately preceded the act,

I do not think that a sentence less than imprisonment for life, in transportation should be passed.

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"The prisoners Nos. 7 to 10 were not in the village even when the murder was committed, and it has not been proved that they did any act to assist the prisoner Ghyboollah personally, such as is necessary to establish the charge of accessaryship after the fact. They knew a felony had been committed, and used their best endeavours, as influential persons in the village, to conceal it. They are, therefore, guilty of privity, and convicting them of this offence, I sentence them each to two (2) years' imprisonment with labor, if not redeemed by the payment by each of a fine of rupees (50) fifty."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

BATOOL ON BEHALF OF RANEE BISSESSHUREE *versus* GOOROODYAL SINGH.

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Case of GOOROODYAL SINGH.

A conviction of arson annulled on the incredibility of the evidence.

CRIME CHARGED.—1st count, arson, and 2nd count, being present, aiding and abetting in the same.

CRIME ESTABLISHED.—Arson.

Committing Officer, Mr. A. G. Macdonald, magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 12th November 1851.

Remarks by the sessions judge.—"From the statement of the prosecutor (a servant of Ranee Bissesshuree, whose newly-constructed thatched house, near her *komat*, was burnt to the ground,) it appears that owing to apparent animosity on the part of Mukrund Deb Rykut (in possession, on the result of a summary suit, of the estate of Bykuntpore) towards Ranee Bissesshuree, mother of the minor, Rajrajender, who, through his guardian, had instituted a regular suit to determine the right of succession to this estate (in whose favor a decree has lately been given), and with a view, apparently, that the Ranee with her children should not reside in this house, which was at no great distance from his own dwelling, the prisoner, a principal jemadar in the employ of Mukrund, with another dependant named Jaker, (not yet apprehended) accompanied by thirty or forty persons, proceeded, on a Tuesday night, in Magh last, to the newly-thatched house of the Ranee, adjacent to her *komat* or granary, and deliberately set fire to the roof on the eastern side of the compartment of the dwelling, the door of which faced the south, while Jaker set fire to the northern part of it, by which (fire)

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this and five other compartments of the dwelling were burnt to the ground, the relatives of the Ranee having previously vacated the premises.

"The prisoner resorted to *alibi*, which the evidence he called could not prove.

"The *futwa* found the prisoner guilty of the 1st count, and considered him liable to punishment by *akoobut*, in which finding I concurred."

Sentence passed by the lower court.—Five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prosecutor in this case, in his deposition to the darogah of the 23rd February, stated that seeing the house on fire, he ran in that direction, but there being jungle about it, he could not see any persons. To the magistrate and in the sessions court he stated that he saw Gooroodyal set fire to one point and Jaker to another point of the house. A person who gives such directly contradictory statements is not to be believed. The darogah, who first inquired into the occurrence, reported that there were no witnesses to the occurrence. Subsequently, however, three witnesses, servants of the Ranee, whose house is said to have been burnt, came forward and deposed that on Tuesday at night the prisoner Jaker and forty or fifty men came and took possesion of the Ranee's *komat* or granary and stayed there; that on Thursday, at 10 A. M., they saw the above two persons come out with lighted grass, and set fire to the house or houses. One witness was looking after his cow, another coming from bathing, and the third was cutting bamboos, at the time they saw this. The account of the occurrence given by these witnesses is most improbable. They say that Gooroodyal and Jaker were in possession of the place from the preceding Tuesday. If they wished to destroy it they might have set fire to it from inside, why should they expose themselves wantonly in open day by coming outside with burning grass and apply the fire within sight of the owner's own servants? The evidence of these witnesses is not credible, and the conviction of the prisoner Gooroodyal founded thereon is annulled."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

PURKHIT PUREEAH

versus

MADHUB DOSS (No. 5), JUGOO KHATWA (No. 6) AND DURSUN LEKHA (No. 7).

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Case of MADHUB DOSS and others.

The evidence of eye-witnesses to recognition at time of dacoity, rejected for reasons given, as untrustworthy, and there being no other strong proof, the prisoners released.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor and plunder therefrom of property valued at Company's rupees 46-4-0; 2nd count, aiding and abetting as accomplices in the above dacoity, and 3rd count, Nos. 6 and 7, knowingly having in their possession property acquired by the said dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 17th January 1852.

Remarks by the sessions judge.—"On the night of the 22nd November, about 3 A. M., the prosecutor's house was attacked and robbed by a gang of robbers, armed with a gun, *lattees* and *mussals*. They wounded the prosecutor's wife and son, and carried off property to the value of rupees 42. The mohurir of the police thanna of Chetrapal happened during his rounds to be in the neighbourhood of the village where the robbery occurred, and hearing a great uproar, proceeded to the spot. Prosecutor and his son told him the particulars of the robbery, and gave the names of eleven persons whom they identified by the light of the *mussals*. The mohurir immediately proceeded to arrest these parties, who were all found in their houses by the police. The prisoners throughout the inquiry plead 'not guilty.' The witness Doondee Purreea swears to the prisoner Madhub Doss, No. 5, as the party who struck him in the eye with a *lattee* in return for a blow he inflicted on prisoner's head, and the prosecutor, and witnesses who live immediately in the rear of prosecutor's abode, swear that they saw distinctly the prisoners after they came out of prosecutor's house, and were in the act of running away. The prisoner Madhub Doss is unable to account for his time on the night of the robbery, and varies his defence before the darogah and magistrate. He is also unable satisfactorily to account for the wound on his head which was quite fresh when arrested. The prisoners Jugoo Khatwa No. 6 and Dursun Lekha No. 7, fail to establish an *alibi*, some of the witnesses they cite to prove it, having previously declared at the thanna that they knew nothing of the prisoners' where-

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abouts on the night of the dacoity. The prisoners are, moreover, unable to account for the property found in their possession. As the prisoners Nos. 5, 6 and 7 fail to rebut the evidence for the prosecution, and as the latter is consistent throughout in implicating them as actively concerned in the dacoity, with which they are charged, the presumption is warranted that they are guilty, and they are accordingly sentenced as indicated in the body of the statement."

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The chief proof in this case against the prisoners consists in their recognition at the time of the dacoity by prosecutor and three witnesses. In the house of Jugoo a *koolhary*, an axe, and in that of Dursun a *cotora*, recognized by prosecutor as his own, were found, and his son asserts that he gave the prisoner Madhub a blow on the head at the time of the occurrence, the mark of which he bore when apprehended. Evidence to recognition at the time of a dacoity is not much to be depended on. Terror naturally confuses the inmates of the house attacked and keeps others away. The prosecutor in this case pretends that he recognized ten of the dacoits (persons living quite near to his residence) while in his house. It is not likely that persons could go to rob a neighbour's house openly without disguising themselves; and it is highly improbable that any one could recognize so many individuals in such a crowd and at such a crisis, even if they were not disguised. The eye-witnesses state that hearing the noise occasioned by the attack, they went and stood near prosecutor's house and recognized five men as they went away by the light of the *mussals*. All the witnesses recognized the same five, although they themselves were not in the same position. This is most suspicious. Moreover, it is customary with dacoits after plundering a house immediately to put out the lights, so that their having any lighted *mussals* as they went away is not probable. The trifling articles of property found adds little or nothing to the proof. Every one may have a *koolhary* and *cotora*, and all are so similar that their recognition by the prosecutor carries no weight. The evidence of prosecutor's son is also anything but conclusive.

"The court for the above reasons consider that the prisoners have been convicted on insufficient proof and direct their release."

PRESENT:

R. H. MYTTON ESQ., *Officiating Judge.*

PUNDITRAM SHAH

versus

SHEIKH JEMALDEE (No. 2) AND SHEIKH AHSAN CHOWKEEDAR (No. 3 APPELLANT).

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Case of SHEIKH AHSAN CHOWKEEDAR (appellant) and another.

In finding a prisoner guilty of being an accessary, it should be distinctly stated whether it be of being so *before* or *after* the fact.

A prisoner convicted of being only privy to a burglary, exempted from labor in irons.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor and plundering property to the value of Company's rupees 993-12-0; 2nd count, privity to the above crime; 3rd count, aiding and abetting in the crime charged in the 1st count; 4th count, accessaries before and after the fact of the crime charged in the 1st count, and 5th count, No. 3, knowingly having in his possession the stolen property obtained by the above burglary.

CRIME ESTABLISHED.—Accessaries to a burglary.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 29th November 1851.

Remarks by the sessions judge.—"The door of the prosecutor's house was forcibly broken open on the evening of the 24th September, and property stolen therefrom to the value of rupees 993-12-0.

"On his way to the thanna, the prosecutor met the jemadar, to whom he related his loss, and who proceeded with him towards his house. On the road they passed the house of the prisoner No. 3, where the prisoner No. 2 was observed to be looking sleepy and tired; and on being cross-questioned, he confessed that he had been aiding in a robbery the previous night. The jemadar took both the prisoners into custody, and took them to the thanna, where he then wrote out a petition for the prosecutor and made out a list of the property, and reported the case to the magistrate, who immediately issued orders to him to send in the prisoners, and to complete his investigation.

"Both prisoners confessed before the jemadar, the darogah, and the magistrate that they had remained in charge of two boats, while the other parties committed the robbery, and that from them they received some of the stolen goods; and these confessions are proved to be voluntary. Some of the property was found in the house of Ahsan, but none in that of Jemaldee's. The jury found the prisoner Jemaldee guilty of burglary on his own confession, and Ahsan of being an accessary in it; and in the latter part of the verdict I concur. Jemaldee merely confessed that he went out to rob, but remained in the boat while his associates (against whom there is no evidence) committed the theft, so that he also is guilty of being accessary.

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"The jemadar's proceedings were in contravention of Regulation II. of 1832; but I consider them cured by the order of the magistrate for the investigation of the case, which was issued as soon as he heard of the occurrence.

"The magistrate has taken notice of the circumstances, and I have called his attention to a point which he had overlooked; that several of the witnesses to the confession in the Mofussil can neither read nor write."

Sentence passed by the lower court.—No. 2 six (6) months' imprisonment with labor in irons, and No. 3 one (1) year's imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner Ahsan has appealed to this court. On referring to the papers of the trial, I find that the account of the case given by the sessions judge is not quite correct. The prisoner Ahsan did not, as stated therein, confess to the darogah and magistrate that he remained in charge of the boats while the other parties committed the robbery.

"He is, it appears, the chowkeedar of the ward in which the burglary took place. To the darogah he stated, 'I went on 'watch, and near prosecutor's house saw Fekoo and Samee, noto- 'rious bad characters, in a boat, and others with them stealing 'the prosecutor's property and putting it on board. I was going 'to seize them when they threatened to murder me. They after- 'wards came to my house. The *thal* which I have produced 'this day and a *kharoo* were given to keep me quiet.'

"To the magistrate his statement was very similar, except that he added that some of the thieves held him fast while they committed the robbery, and that the other prisoner Jamal received the *thal* and *lota* which was taken to the thanna to make him keep the secret.

"The assessors did not find Ahsan guilty only of being an accessary to the burglary, but of 'complicity and privity.' It is not very clear of what crime the sessions judge has convicted him. In the vernacular order it is first of all stated that he concurs in the finding of the jury against this prisoner, *viz.*, guilty of complicity and privity. Further on, it states that in his opinion the offence of being an accessary to the burglary is established against both prisoners. The English statement tallies with this latter finding, but both are defective in omitting to state whether it is of being an accessary before or after the fact that they are convicted. They were tried for being both.

"The remarks of the sessions judge would lead to a supposition that property undoubtedly belonging to the prosecutor had been proved to be found in the prisoner Ahsan's possession, *i. e.*, in his house. This being the case, the question suggests itself why was he not convicted of the 3rd count, *viz.*, knowingly having in his possession the stolen property? For a solution of this ques-

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tion it is necessary to refer to the evidence, and there it appears that out of three items said to have been found in the prisoner's house, the proof of the finding of two items is insufficient, and the third, *viz.*, a necklace of coins which was claimed by the prisoner as his own, throughout the inquiry, was not clearly proved to belong to prosecutor.

"The proof of the guilt of the prisoner is therefore confined to his own admissions. These are not of being an accessary before or after the fact; but they are of being privy to it, *i. e.*, of the second count upon which he has been tried. The finding of the sessions judge is amended accordingly. The sentence as far as regards the period of imprisonment on the amended finding appears appropriate, but by Construction No. 1178, the imprisonment must be without irons, and the penalty of labor made redeemable by payment of a fine of rupees (100) one hundred within one week. Orders will issue accordingly. The court hopes that the sessions judge will study greater accuracy in penning his finding and remarks on trials than has been evinced in this case."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

AMEER MOLLAH, HURKARAH.

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Case of AMEER MOLLAH, HURKARAH.

The prisoner, a dâk runner, convicted of being accessary after the fact to stealing a Government dâk parcel, containing notes to an amount not ascertained, sentenced to seven years' imprisonment with irons and labor.

CRIME CHARGED.—1st count, feloniously stealing a Government dâk parcel, containing bank-notes and other securities for the payment of money to an amount not ascertained; 2nd count, accomplice in the said theft; 3rd count, accessary before and after the fact; and 4th count, having kept in his possession Bank of Bengal Note, No. 8486, for Company's rupees 250, knowing it to have been a portion of the property acquired by the above-mentioned theft.

CRIME ESTABLISHED.—2nd, 3rd and 4th counts charged.

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 30th December 1851.

Remarks by the sessions judge.—"The prisoner was a Government dâk runner, and on the night the mail was plundered of Bank of Bengal Notes, *hoondees*, drafts, &c., to a large amount, he was on his turn of duty.

"The number of the note stated in the charge has been proved to have been included in the packet stolen; and although it passed through several hands before it reached the Bank of Bengal, where it was first stopped, yet it has been satisfactorily traced to the prisoner, who has confessed to being a *particeps criminis.*

"The 2nd, 3rd and 4th counts having been clearly proved against him, he has been sentenced, under the provision of Section XXXIII., Act XVII. of 1837."

Sentence passed by the lower court.—Seven (7) years' imprsonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow Bart.)—"The prisoner has been convicted and sentenced by the sessions judge on the 2nd, 3rd and 4th counts charged in the calendar.

"From the record it appears that the Government dâk packet was robbed *en route* between Serajgunge and Calcutta, and two bank-notes, that in count 4, No. 8486, for rupees 250, being one of them, were abstracted, and consequently did not reach their destination. The prisoner was at the time a dâk banghy runner on the establishment. The above note was stopped at the Bank of Bengal and was traced back to a witness Govind-

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nath Chowdry, and through him to Kalachand, *alias* Kangalee Ghose, who stated he got it from another witness Taj Mahomed. Taj Mahomed alleged he got a note for rupees 25 from the prisoner Ameer, who on being apprehended confessed that in the month of Assin, about the time of the occurrence of the theft, he was carrying the banghy between Benapole and Jyepore; two letter carriers, Ruttub and Ramzan, were a little before him. They gave him a parcel to keep, they had opened a parcel and taken out of it four half notes. Ruttub gave them to him, saying when the cash was ready he would ask for them again. Prisoner does not read or write; he did not know the value of the notes but left them with Taj Mahomed, who said they were for rupees 28. Taj Mahomed said he had lost them, which the prisoner mentioned to Ruttub and Ramzan, who told him to be silent on the subject.

"This confession he repeated in nearly similar terms before the magistrate, and the confessions are duly verified. In the sessions court he pleaded 'not guilty.'

"Three witnesses only, irrespective of those to the confessions, are brought forward for the prosecution in the calendar; others were, however, examined by the sessions judge.

"The first witness, Govindnath Chowdry, deposes that he, at the request of Kalachand, *alias* Kangalee Ghose, endorsed a note brought to him by the said Kalachand, who could not write, with his name. Witness swears to the endorsement on the note, No. 8486, for rupees 250 as having been made by him.

"The next witness is Kalachand, who swears he took a note, the value of which, rupees 250, he learned from Radhakissen Kooloo, the brother of Bindrabun, the purchaser of the note from him, Kalachand, to Govindnath, who, at his request, endorsed it for him. Kalachand further deposes he got the said note, from Taj Mahomed. He was not acquainted with him before, nor did he ever receive another note from him. This particular note however, for rupees 250, he, at the request of Taj Mahomed, got exchanged at Bindrabun Kooloo's who gave to him, Kalachand, the full value of the note in two payments, *i. e.*, rupees 28 the day the note was offered, and rupees 222 three days afterwards, all of which he, Kalachand, paid to Taj Mahomed. Witness cites several persons to prove the payments to Taj Mahomed, whose evidence will presently be referred to.

"The sessions judge states in his remarks on the trial that the note, No. 8486, 'has been satisfactorily traced *to the prisoner*, 'who has confessed to being a *particeps criminis*.' Now the record contains no proof whatever that the note in question for rupees 250 was ever in the hands of the prisoner; it certainly was not found in his possession. When stopped at the Bank it was traced back as far as the witness Kalachand Ghosé. Kala-

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chand said he got it from Taj Mahomed, while the latter stated he gave the former a rupees 25 note only. No attempt has been made to establish which of these stories is true. Taj Mahomed further swears that the note which the prisoner Ameer gave to him was for rupees 25 only, and that he gave *that note* to Kalachand to be changed. Taj Mahomed's evidence, so far as it goes, entirely exonerates the prisoner of having kept in his possession the note, No. 8486, for rupees 250, knowing it to have been a portion of the property acquired by theft. The prisoner Ameer must be acquitted on the 4th count.

"The sessions judge has also convicted on the 2nd and 3rd counts, on which the prisoner is charged, with being an accomplice in feloniously stealing a Government dâk parcel containing notes, amount not ascertained, and being accessary before and after the fact.

"In his confessions the prisoner states that Ruttub and Ramzan (not committed) opened a parcel (he did not see them open it) and gave him four half-notes out of it, which notes he, prisoner, gave to Taj Mahomed, who said they were for rupees 28; what was the exact value of these notes is not proved. This confession clearly makes the prisoner an accessary after the fact, the offence in the 3rd count. To this extent I uphold the conviction of the prisoner by the sessions judge.

"Acquitting him as I do of the other charges preferred in the several counts, I see no reason to interfere with the sentence of seven (7) years' imprisonment with irons and labor which has been passed on him. He was a servant of the Government at the time of the offence, and public justice demands that the highest penalty sanctioned by the law should be awarded. I confirm that sentence."

PRESENT.

SIR R. BARLOW, BART., *Judge.*

ABEDOOLLAH

versus

MAHOMED ALLIM (No. 10), MAHOMED SALIM (No. 11), NYIM OOLLAH (No. 12) AND MAHOMED SULLIM (No. 13).

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Case of MAHOMED ALLIM and others.

Four prisoners sentenced by the sessions judge to seven years' imprisonment with irons and labor, on conviction of culpable homicide.

The court upheld the conviction, but observed that the case was one of much aggravation, and that a more severe punishment would have been justified under the circumstances.

CRIME CHARGED.—1st count, wilful murder of Hafiz, *alias* Hafiz Mahomed, brother of the prosecutor; 2nd count, privity to the above crime; 3rd count, severely wounding and assaulting Hafiz, *alias* Hafiz Mahomed, with intent to murder, and 4th count, privity to the crime charged in the 3rd count.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 15th January 1852.

Remarks by the sessions judge.—"The deceased had been to buy cows, and on his return in a boat, the prisoners attacked it, and pulling him out, took him to their houses, where it is proved they severely beat him with sticks. He was taken by his neighbours to his house, and from thence was sent into Sylhet to the hospital, where he remained some days. He then, at his own request, was permitted to return home, but three days afterwards his body was brought back for examination.

"Some of the witnesses depose to his having been ill of fever about a year ago, and that though the fever had left him, he was still weak.

"The native doctor deposes that when brought into hospital, he had many marks of bruises arising from blows of a stick about his body, and that he complained of much pain in consequence, and that internal inflammation took place, which caused his death. He further adds that he was in a dying state when he left the hospital, and that a *post mortem* examination convinced him that the inflammation was occasioned by the severe beating he received.

"From the deposition of the prosecutor, it appears that the prisoner Sullim had been caught by the deceased in the house of his slave girl, Musst. Dhunbee, and been beaten; and this statement is confirmed by Musst. Dhunbee herself.

"The prisoners pleaded 'not guilty,' and urged that the deceased and witnesses attacked their houses and beat them, but they assigned, as the reason, that they refused to give deceased a road he wanted. They, however, called no witnesses for their defence.

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"Observing that they had formally brought the charge before the magistrate, I examined the papers, and find they gave in their petition four days after the deposition of the deceased had been taken, and that they charged the witnesses in this case with it. Witnesses to it depose to the attack; but say that seeing them, the parties left off the attack, and that they don't know how Hafiz was beaten, nor have they heard. The case was evidently got up in the hope of injuring the present charge.

"The deceased, I observe, gave in a petition at first in which the names of Budul and Sonah, his two principal witnesses in this case, are not entered, but it was prepared by a *mookhtar*, and the deceased was at the time very ill. The other witnesses depose to the presence of these two men, and I have no doubt of the correctness of their deposition.

"The assessors find the prisoners guilty of culpable homicide; and in this verdict I concur.

"The deposition of the deceased was taken on oath before the assistant magistrate in the hospital, but the magistrate did not enter it as evidence in the calendar, nor is it proved; I have not, therefore, transferred it to my file."

Sentence passed by the lower court.—Each seven (7) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut —(Present: Sir R. Barlow, Bart.)—"This is a case of considerable aggravation. It appears that Hafiz, the deceased, caught one of the prisoners, Sullim, in an intrigue with his slave girl, Musst. Dhunbee, some time before the occurrence to which this trial relates, and beat him in consequence. From that date the prisoners, who are four brothers, and the deceased, were at enmity. On the 24th September, Hafiz, in company with Budul and Sonahoollah, was passing the house of the prisoners in a boat, when they all pushed off, boarded deceased's boat, dragged him into their own, took him ashore, and beat him most severely with clubs. He was sent into hospital and remained there for some days. His friends applied to have him removed. He was taken home, and died on the third day of his arrival there. The corpse was sent in and examined by the native doctor, who deposes he has not the least doubt that the assault was the cause of death. The medical officer's evidence on the *post mortem* examination would have been more satisfactory, but, from some cause not assigned, he did not see the corpse. The deceased, when he was taken out of the hospital, was, the native doctor deposes, in a dying state. The corpse exhibited several marks of severe beating, and death was the result. The assault was deliberate, and the maltreatment which deceased met with from all the brothers, most severe. The offence called for a much heavier sentence; but the case is before the court in appeal, and the punishment awarded by the sessions judge cannot be enhanced."

PRESENT:

J. R. COLVIN, Esq., *Judge.*

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Case of SHEIKH SHEEKAROO MOOLLAH.

Conviction of perjury by the sessions court upheld, but sentence reduced from imprisonment for five to imprisonment for three years, with reference to the advanced age of the prisoner.

CRIME CHARGED.—Perjury, in having on the 18th, 20th and 24th June 1851, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the joint magistrate of Jumalpore, that his home was in Koorkee Chur Kowaleekandee; that he was not confined by Turuf Roy zemindar's people, but was confined by the Lahoree zemindar's omlah, Rajchunder Buttoshalee and others, and had preferred a false complaint by his son Shokat, *alias* Shafat, at Bogra, that Turuf Roy's people had concealed him, and again on the 29th July 1851, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the joint magistrate of Bogra, that Moonshee Mundul and others assaulted him and carried him off from his home at Ram Shaher Chur, and that after his release from confinement he was sent by the Hajeepore darogah to the joint magistrate of Jumalpore, and through fear of Anundo Kishore Roy's people he said that Tareeneekunth Lahoree's people had kept him concealed, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. Alexander Abercrombie, Assistant, exercising the powers of a joint magistrate, Jumalpore, Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 15th December 1851.

Remarks by the sessions judge.—"The case is sufficiently detailed in the charge, and arose in disputes about land. In his confession, the prisoner admitted that his deposition on oath, before the assistant at Jumalpore, was false, and that he had done so because he had been threatened by Anundo Kishore Roy's naib, who had also bribed him with the present of a cloth and a cap. Before this court the prisoner said he had been seized and carried off from his house and a cloth put into his hand and taken to Meghoo Sircar's house, to which, and to the cloth and cap having been given to him, he named witnesses, one of whom was the zemindar's naib, who admitted giving the cloth, because he asked for it, and had been kept long at Jumalpore. This may be true, but it was not given without a consideration. The other witnesses, residents of the same village as the prisoner, say he was

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seized and carried off; but in disputes regarding land between zemindars little reliance is to be placed on the evidence of the alleged *ryots*, and especially when the disputes, as in this case, are about a *chur* become culturable. The jury's verdict declared the prisoner guilty of perjury, in which I concurred."

Sentence passed by the lower court.—Five (5) years' imprisonment without irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"The prisoner, in his defence on the trial, admitted the confession which he made before the magistrate. The alleged fact of his having committed the perjury through intimidation cannot be accepted as an extenuation of it.

"Looking, however, to the advanced age of the prisoner, I think that the sentence may be appropriately reduced from imprisonment for five (5) to imprisonment for three (3) years, from the date of the sentence by the sessions judge, and direct accordingly."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

PANAHOOLLAH

versus

FEDOOLLAH.

1852.

March 15.

Case of FEDOOLLAH.

The prisoner convicted of an assault and wounding, with intent to murder, and sentenced as recommended by the sessions judge.

CRIME CHARGED.—Severely wounding the prosecutor with a *dáo*, with intent to kill him.

CRIME ESTABLISHED.—Severely wounding with intent to kill.

Committing Officer, Mr. H. C. Halkett, magistrate of zillah Backergunge.

Tried before Mr. W. J. H. Money, sessions judge of Backergunge, on the 24th November 1851.

Remarks by the sessions judge.—"It appears from the deposition of the prosecutor, that on Sunday, the latter end of Assar, about one *pukur* of the day remaining, the prisoner, who was his cousin, was planting a plantain tree and blocking up a road belonging to their joint premises, and in consequence of the prosecutor's interference the prisoner abused him, and upon his (prosecutor's) threatening to inform their zemindar, the prisoner gave him a blow on the head with a hatchet he had in his hand, and another blow across the left ear, which knocked him down, and a third blow on the neck, which rendered him insensible; that in consequence of his cries, witness No. 1, Emamooddin, and Ushkur, witness No. 9, and others came to his assistance, and that day witness No. 12, Bashye Chowkeedar, conveyed him to the

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thanna, where he gave his deposition and was then removed to the hospital at Burrisaul, where he recovered; the prosecutor and prisoner resided in the same premises, and no other dispute occurred between them except what took place on the day in question. The hatchet produced in court was recognized as the instrument with which the prisoner wounded the prosecutor. The prisoner denied the charge on which he was arraigned in this court; in the Mofussil and before the magistrate he admitted having given the prosecutor three blows with a hatchet, but declared that the prosecutor threatened first to cut his (prisoner's) ear. Witness No. 1, Emamooddin, deposed to the dispute between the prosecutor and prisoner about planting the plaintain tree, as described by the prosecutor, and on the prosecutor's threatening to cut the prisoner's ears, to his seeing, at a distance of five or seven hands, the latter give him a blow on the head with a hatchet he had in his hand and then two other blows, one of which wounded the ear; this evidence was corroborated by witness No. 2, Rowshunooddin, and witness No. 3, Zeeaoollah, who saw three blows given by the prisoner, and afterwards saw a wound on the prosecutor's head, on the left ear and on the neck, and all three witnesses deposed to the fact of there being no other dispute between the parties. Witness No. 8 deposed to his going to the prosecutor's house and seeing the wounds as described. Witness No. 9, Ushkur, deposed to his hearing a cry at the prosecutor's house on the day in question, and on his going there, to his seeing the prisoner with a hatchet in his hand, and the prosecutor lying down near his premises wounded, and to his snatching the hatchet from the prisoner's hand, and to his seeing a wound on the prosecutor's head, left ear and neck. Witness No. 10, Bewoollah Chowkeedar, deposed to his apprehending the prisoner, who admitted having wounded the prosecutor. Witness No. 11, Sheikh Ashoony, deposed to his seeing a wound on the prosecutor's head, left ear and neck. Witness No. 12, Bashye Chowkeedar, deposed to the same purport, and to the fact of the prisoner admitting having wounded the prosecutor. Witness No. 13, Koodrut-oollah, brother of the prosecutor, confirmed the evidence of the previous witness. The witnesses to the *sooruthal* deposed to a wound on the head of the prosecutor, about three fingers' long, one finger broad; a wound on the neck, four fingers' long, one finger broad, and half a finger deep; a wound over the left ear, six fingers' long, one finger broad, and one finger deep, as if from a hatchet. The uncovenanted assistant surgeon deposed to the wounds being of 'a most dangerous 'character;' that there was one wound five inches long, which divided the left ear, and extended backwards to the pole of the head; in depth it had penetrated to the bones, which were indented by the blow. There was likewise a wound on the back

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of the neck three inches long, which also penetrated to the bone; there was further a wound about an inch long upon the crown of the head, which divided the integuments to the bone. All these wounds were of a most dangerous character and very nearly proved fatal and must have been inflicted by some sharp cutting instrument. The prosecutor was pronounced to be in perfect health at the time the deposition was given. The prisoner cited no witnesses. I concurred with the jury in considering him guilty of the charge on which he was arraigned on violent presumption and sentenced him to punishment accordingly."

Sentence passed by the lower court.—To be imprisoned for ten (10) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoner's confessions and the evidence of eye-witnesses fully prove the offence charged against the prisoner. In his defence he states that the prosecutor was about to attack him, and threatened to cut off his ear. Emamooddeen, a witness, has deposed that he heard prosecutor's threat, but no overt act was committed in execution of that threat, neither was the threat heard by any one else.

"The medical officer has deposed that the wounds were of the severest nature, and that the prosecutor's life was in imminent peril. I see no reason to interfere with the sentence passed by the sessions judge."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

RADHA KISHTO DAO

versus

RAMGUTTI KURMOKAR (No. 1), DAS MAHOMED (No. 2), HOSHUN (No. 3), NEAMUTOOLLAH BEPAREE (No. 4), ASHKUR BEPAREE (No. 5), MUNNOO (No. 6), ANNOO (No. 7), BANOO (No. 8), EYENUDDEEN PUTWAREE (No. 9), JOYNUDDEEN (No. 10), EYENUDDEEN (No. 11), URHUR MAHOMED (No. 12), RAMDHON, ALIAS DHUNA RAM DHOBY (No. 13), NIM DAS, ALIAS NIM CHAND DHOBY (No. 14), RAMLOCHUN MALI (No. 15), ASSABUDDEEN (No. 16), ASSANUDDEEN (No. 17) AND GOOS MAHOMED (No. 18).

1852.

March 16.

Case of RAMGUTTI KURMOKAR and others.

The case of riot attended with plundering, the conviction of fifteen prisoners was, on appeal, upheld by the Nizamut. Three prisoners were acquitted, the evidence for the prosecution in regard to their identity being considered doubtful and malicious.

CRIME CHARGED.—1st, tumultuously invading the bazar of Hydergunge, and forcibly plundering therefrom salt, oil and other articles, the property of sundry persons frequenting that market; committing an assault upon and wounding Amjad Kamoo, Bindrabun and Bishtoram, and setting fire to the zemindar's cutcherry and to the dwellings of Boodinath Kamar and Amjad Neghabun; 2nd aiding and abetting in the above.

Committing Officer, Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, officiating sessions judge of Tipperah, on the 14th February 1852.

Remarks by the sessions judge.—"Chowdry Bux Allee, an influential zemindar in this district, founded two years ago a *hât* or market called Hydergunge, in almost immediate contiguity with another long-established market belonging to a neighbouring zemindar, Gunga Chunder Chukerbutty. The distance of one market from the other being seven or eight *kanees* of land, it was impossible for both to flourish, and the more recently established *hât* of Hydergunge seems to have prospered at the expense of its neighbour.

"Chowdry Bux Allee, in whose time all had gone on well and quietly, died in September last, leaving a daughter named Afrannissah who has succeeded to his property inclusive of the *hât* of Hydergunge.

"On the 7th of October, about 4 or 5 o'clock in the afternoon, four boats, in which were one hundred and fity or two hundred men, retainers of Gunga Chundur Chuckerbutty and headed by Wullee (not apprehended) the farmer of the neighbouring *hât* Ruttungunge, made their appearance at Hydergunge. The men landed Wullee, armed with a sword and stick, and having by his side a torch, and the rest provided with sticks. They commenc-

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ed to act riotously, and Wullee attacked and wounded Amjud, the watchman of the market, with his sword. The men who accompanied Wullee then proceeded to a general assault of the people attending the *hát*. The result was that Kamoo, Bindrabun and Bishtoram were wounded, much of the articles brought for sale to the market carried off, and Wullee setting fire to the zemindary cutcherry, it spread to the houses of Amjad and Boodinath Kamar and the three were burnt to the ground. The rioters then dispersed, some apparently in the boat and some by land. The object of this riot was to restore the *hát* of Ruttengunge to its original state of prosperity by destroying the rival *hát* of Hydergunge, to the success of which the former owed its present deteriorated state.

"The wounds inflicted on Amjad are described by the civil surgeon to be on the head, and such as might have been produced by a blow of a stick, or thrust with some blunt pointed instrument. The injuries suffered by Kamoo, Bindrabun and Bishtoram appear to have been of a slighter description and no trace of them is now perceptible.

"The accused pleaded 'not guilty.'

"Nine witnesses to the fact describe the circumstance characterizing this riot almost precisely as they are stated by the prosecutor, with this exception, that while the latter named in the sessions court no individual in particular as the originator of the fire, they deposed to its having been the act of Wullee, which was also the prosecutor's statement before the magistrate. They were able to speak with certainty to the identity of the accused from the circumstance of the latter resorting habitually to the *hát*.

"The accused set up *alibis*, or pleaded simple denials, and one, Das Mahomed, stated that the bazar had been fired by the prosecutor's order, with the view of instituting this false charge against the prisoners. The witnesses of such as attempted to establish their defence failed in my opinion to rebut, or even to weaken the evidence against them.

"The law officer acquits the prisoners on the ground of the evidence against them being contradictory, and not that of independent witnesses and of their recognition of the prisoners being doubtful. In this decision I cannot concur. That slight discrepancies should not occur in the evidence of men, some of whom appear to have undergone considerable violence, while all may easily be supposed to have been alarmed and confused, is scarcely possible. But I can find no contradictions on material points or of a character to render the veracity of the witnesses doubtful. Their dependance, to which the law officer objects, is simply that of being *ryots* of the late Bux Allee Chowdry.

"It is necessary to mention that, on the 11th of October Ameeruddeen and Ram Kunnye Shah, two of the accused in this

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case, but who have escaped apprehension, laid a complaint, not at the thanna, but before the joint magistrate of Noacolly, bringing a counter charge of assault and plunder of the Ruttungunge *hát*. I agree with the magistrate who, in alluding to this latter case, (which is also herewith submitted) states his opinion that it was got up to meet the truer charge against themselves and is not entitled to belief.

"The fact appears to me to be that, while Chowdry Bux Allee lived, the ill-feeling which the success of his new *hát* gave rise to on the parts of those interested in the Ruttungunge *hát*, was kept in check by a wholesome fear of consequences. Immediately that he died, the proprietor of Ruttungunge, no longer fearing from the daughter the retribution he would have met with from the father, resolved to restore Ruttungunge to its former prosperous state by ruining Hydergunge. To effect this, he resorted to a riotous invasion of it by *lateeals*, and although the prisoners in this case are but inferior agents, so serious was the riot, and so much more serious might it have been had resistance been resorted to, that I am of opinion that the prisoners should be sentenced to three (3) years' imprisonment in the jail of this district with labor and in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The law officer takes exception to the evidence on the ground of certain discrepancies and of the witnesses being *ryots* or dependents of the prosecutor's employer and would release all the prisoners, but I concur with the sessions judge in dissenting from this *futwa*. The sessions judge's remarks on the subject are apposite and correct. In these cases, where the conviction rests solely upon the identity of the accused, I attach much weight to the opinion of the judge, who had an opportunity of observing the demeanor of the witnesses, and of determining the exact value of their testimony. The appellate court can only test the evidence with the statements made by the same witnesses at the thanna and before the magistrate, and with the probabilities of the case. This I have done, and find the evidence to the identification of all the prisoners but three, has been clear and consistent throughout. These prisoners, Nos. 9, 10 and 11, were not identified by any of the witnesses now examined, at the thanna; the occurrence was then fresh on their memory; they swore to the person of many of the prisoners; and it may be reasonably inferred that, had they really recognized the prisoners in question, they would have then named them. Giving the prisoners Nos. 9, 10 and 11 the benefit of this doubt, I acquit and direct their immediate release. The remaining prisoners committed a most violent outrage, and though inferior actors in it, will not, I think, be punished with undue severity, if I confirm the convictions and sentences proposed to be passed upon them."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

MUKOONDUR PATRAH

versus

SHEIKH PEEROO.

1852.

March 17.

Case of SHEIKH PEEROO.

The prisoner was convicted of highway-robbery, and sentenced to five years' imprisonment with labor and in irons. The sentence was, on appeal, upheld.

CRIME CHARGED.—Highway-robbery, in having forcibly robbed the prosecutor and witness No. 1, Gopee Singh, on the high-road, of property valued at Company's rupees 3-9-0; 2nd, knowingly having in his possession property acquired by that highway-robbery.

CRIME ESTABLISHED.—Highway-robbery.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Trial before Mr. W. Luke, sessions judge of Midnapore, on the 7th January 1852.

Remarks by the sessions judge.—" It appears that the prosecutor was proceeding from Calcutta to his home in the Balasore district, and at about 2 o'clock P. M. of the 21st December 1851, shortly after leaving the village of Serampore, in this district, he was followed and overtaken by a Mussulman, whom prosecutor identifies as the prisoner at the bar, who desired him to stand still as he required his services to carry a bundle. The prosecutor being in a weak and exhausted state from dysentery, pleaded his inability to carry anything, upon which the prisoner proceeded to maltreat him, seized hold of, and snatched away from his, prosecutor's, waist, a piece of cloth, in the corner of which one rupee was tied up. The prosecutor entreated prisoner to restore the money, as without it he must starve ere he could reach his home. But the prisoner would not listen, but inflicted sundry stripes on the prosecutor with a whip. His cries brought two chowkeedars and two other travellers to the spot. The prosecutor stated what had occurred, and one of the travellers, the witness Gopee Singh, then stated that the prisoner had also attacked him in a similar way a short time previously, and forcibly taken from him a piece of cloth and two rupees. The chowkeedar then arrested the prisoner and took him to the nearest police station, and subsequently to the thanna. Before the darogah the prisoner admitted having taken the cloth from the prosecutor, but denied the charge as regards the rupees; in extenuation of his conduct he pleaded that he was not in his right senses, having previously drunk some spirits; before the magistrate he varied the statement given in the Mofussil, admitting, however, that he had accosted the prosecutor, who immediately accused him of theft and raised the alarm. In this court he pleads 'not guilty', and that the accusation is altogether false and prompted by malicious motives. The deposition of the

prosecutor is consistent throughout, and his manner of giving it in this court carries with it a conviction of its truth. The disease under which he was and is still labouring, compelled him to linger behind his travelling companions, and his solitary, weak and helpless state no doubt prompted the prisoner to rob him, thinking he might do so with impunity; especially as he had successfully robbed another traveller, also in a helpless condition from sickness, a very short time before. The assault and robbery of the two pieces of cloth having been committed is fully corroborated by the evidence for the prosecution, and it may likewise be presumed that the money was also taken, as the amount tallies with that found on the prisoner's person when searched. He accounts for the money found on him by stating that it had been paid to him as wages by his master before leaving Midnapore a few days previously, and his master, who was cited as a witness for the defence, corroborates the prisoner's statement as to the amount of the wages. It does not follow, however, that the rupees found were the same he had received from his master, and it is not probable that the prosecutor, who had no other money about him than the one rupee and a few pice in a bundle, which the prisoner threw away, should have set out on a long journey without providing himself with means of subsistence by the way. The assessors declare the prisoner guilty on strong presumptive proof of highway-robbery, and concurring in their verdict, I sentence him accordingly to five (5) years' imprisonment with labor in irons."

1852.

March 17.

Case of Sheikh Peeroo.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner has appealed relying on the plea he urged at the trial, that the prosecutor had maliciously accused him. He was a syce in the employ of a gentleman at Midnapore, and from his master's evidence it appears that he is addicted to smoking *gunja* and drinking spirits. It is clear from the evidence that he assaulted the prosecutor and the witness Gopee, first the latter, and then after going some distance, the former, as they were travelling along the road, and robbed them of the little property they possessed. They had no previous acquaintance with the prisoner; and there is no reason whatever for doubting their clear and consistent statements, which are supported by the evidence of the witnesses Nos. 3 and 4, to the arrest of the prisoner, and the finding of the stolen clothes in his bundle. The prisoner had hitherto borne a good character. He admitted before the darogah that he snatched the cloth from the prosecutor under the influence of liquor; but this, if it were true, is no excuse for the commission of crime; and it is necessary for example to deal severely with this class of offenders, who, presuming on the situation they hold, wantonly assault and rob travellers in the public high-way. I see no reason to interfere with the conviction and sentence."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

RAMESSUR CHUCKERBUTTY

versus

KASHEE DASS (No. 8.)

1852.
March 18.

Case of KASHEE DASS.

The prisoner convicted of robbery and theft, was sentenced to five years' imprisonment with labor in irons; order upheld in appeal by the Nizamut Adawlut.

CRIME CHARGED.—Burglary, in having forcibly broken into the house of the plaintiff's master and stolen therefrom property valued at rupees 211-13-0; 2nd, aiding and abetting as accomplice in the above burglary; 3rd, knowingly having in his possession property acquired by that burglary.

CRIME ESTABLISHED.—Burglary.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 20th January 1852.

Remarks by the sessions judge.—"On the night of the 25th December 1851, some thieves broke into the house of Gunes Chunder Dutt Opadhia and Lukhee Narain Opadhia, in Patna bazar, in the town of Midnapore, and stole two *petarahs* containing property to the value of Company's rupees 211-13-0. The owners of the house were absent, and the latter was in charge of the prosecutor and some other servants. Prosecutor suspected the prisoner and some other parties who resided in a neighbouring *mohullah,* from the circumstance of one of them, Sudder Tautee, having come to prosecutor's house twice during the day of the 25th December, which was quite unusual, and he therefore requested the police to search their houses, which was done. In the house of the prisoner Kashee a quantity of property was found, including the articles in court, which prosecutor identifies as part of that stolen on the night of the 25th. Kashee was arrested, when he confessed that he had assisted at the robbery, and this confession he repeated before the magistrate. Before this court he pleads 'not guilty,' and in his defence, that he has long been at enmity with the owner of the property found in his house, who caused it to be placed there in his (prisoner's) absence to get him into trouble. He cites witnesses to corroborate this statement, but they are unable to say anything in his favor. The confessions are fully borne out by the circumstances elicited on the trial. There can be no doubt of the truth of the former, as the prisoner himself pointed out where a portion of the stolen property was concealed in his house. The assessors declare the prisoner guilty of the charges preferred against him, and seeing no reason to dispute the justness of this verdict, I sentence him to the punishment noted in the statement."

Sentence passed by the lower court.—Five (5) years' imprisonment with labor in irons.

1852. March 18. Case of KASHEE DASS.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner has appealed. His plea, that the prosecutor and the witnesses, who depose to the finding of the property in his house, had leagued together to ruin him, and that the darogah forced him to confess, is without proof; whereas the voluntary nature of his confession, both before the police and the magistrate, is attested by the subscribing witnesses. I see no reason to distrust the evidence to the finding of some of the stolen articles in the prisoner's house, and others in a pond, at the prisoner's indication. The appeal is, accordingly, dismissed, and the sentence passed confirmed."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

MAHOMED HOSHUN

DOWLUT GAZI (No. 10), JIWAN GAZI (No. 11), ASSAD (No. 12), OONTI MAHOMED (No. 13), MEHER ALEE (No. 14) AND DOMUN GAZI (No. 15).

1852. March 19. Case of DOWLUT GAZI and others.

A mere assertion of false prosecution rejected as insufficient grounds for interfering with a sentence.

CRIME CHARGED.—Attacking at night the house of the prosecutor and assaulting and wounding him; 2nd, being accomplices in the above.

CRIME ESTABLISHED.—Attacking at night the house of the prosecutor and assaulting him.

Committing Officer, Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 12th January 1852.

Remarks by the sessions judge.—"The cattle of Dowlut, No. 10, trespassed on the rice field of prosecutor, who complained to his zemindar, and in revenge his house was attacked at night by the prisoners, who are sworn to have assaulted and wounded him.

"The prosecutor bore on his left arm and thigh marks of wounds, but I could not conclude that the wounds were inflicted by a *dáo*, though they seemed incised wounds. On both thigh and arm there were two parallel marks as if they had been caused by two cuts on each limb. It seemed to me that they were more likely to have been made by a split bamboo, and it is even possible that they may have been self-inflicted. Indeed the whole of the four marks being in one direction, raises suspicion that they were so. On the whole I did not, especially as the attack took place at night, deem the evidence sufficient to prove the wounds to have been inflicted with a *dáo*.

"The prisoners all denied their guilt, and some of them imputed the accusation against them to enmity. Only one of

1852.

March 19.

Case of Dowlut Gazi and others.

them caused the evidence of the witnesses to be taken in exculpation, but he denied all knowledge of aught exculpatory.

"The prisoners all proved to have taken part in the attack and assault, and concurring with my assessors, I have sentenced them to two (2) years' imprisonment with labor, commutable to a fine of rupees (50) fifty each."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoners appeal to this court, asserting that prosecutor inflicted the wounds on his own person, and that the prosecution is false and unfounded. No sufficient reasons are given for this assertion. The prisoners have been convicted on full proof of guilt, and there is no reason to interfere with the sentence passed."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

MOOLCHUND DHOBEE

versus

CHUTTURDHAREE (No. 4), KOONJUL AHEER (No. 5), KUNNIAH RAE (No. 6 APPELLANT), MUSST. KUDMAN (No. 7 APPELLANT) AND MUSST. RAIKHAN (No. 8).

1852.

March 19.

Case of Kunniah Rae and others.

Sentence upon the prisoner convicted of knowingly receiving stolen property, upheld on appeal.

CRIME CHARGED.—1st, burglary attended with theft of property valued at rupees 109-15-0; 2nd, knowingly receiving stolen property; 3rd, accessaries to the above crime.

CRIME ESTABLISHED.—No. 4, burglary and theft, and Nos. 5 and 6 knowingly receiving stolen property.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 10th December 1851.

Remarks by the sessions judge.—"The particulars of this case are these:—

"On the 27th October 1851, a burglary was committed in the house of the prosecutor, who is a washerman, and sundry property of his own, with clothes entrusted to him for washing, were carried off by the thieves. On the 28th, the chowkeedar reported the occurrence at the thanna, and the prosecutor on being questioned said, that if he obtained any clue to the stolen property he would file a petition for inquiry. On the 31st, one Toolsee Ram, a mohurir of the foujdaree court, who lives in the same village, and whose own house had been robbed a short time before, receiving private information that some clue had been found to the property stolen from the prosecutor, and apparently hoping that some discovery might be made as to his own,

informed the prosecutor, and applying for assistance at the police, they started off on the night of the 31st October with the mohurir of the thanna, and remaining early the next morning at the suspected house, (the residence of prisoner No. 6,) which they surrounded.

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"Prisoners Nos. 4 and 5 were sleeping in the verandah, and seeing the party approach, they jumped up and ran inside. No. 5 was seized, and the prosecutor recognized a *chuddur* and *dhotee* which were wrapped round his person and which are produced in court.

"The prisoners were then searched, and the property, from Nos. 1 to 26, was found in the houses of the several prisoners, all of whom are living together; No. 7 is the wife, No. 8, niece of prisoner No. 6.

"On the 1st November, prisoner No. 4 confessed to both the burglary and theft before the darogah, acknowledging that he lived with prisoner No. 6, who he alleged to be cognizant of the matter.

"The confession was repeated before the magistrate, and both are attested before the court by the subscribing witnesses.

"Property from No. 9 to No. 18 was found in this prisoner's house, and is identified by the several proprietors.

"On the same date prisoner No. 5 acknowledged before the darogah that the two pieces of cloth found on his person and recognized by the prosecutor, had been given to him by prisoner No. 6, in payment of a debt, and that he lived with Kunniah, (prisoner No 6), and had seen other clothes in Kunniah's house, which Kunniah had told him he had stolen.

"This statement he denied before the magistrate, but six other articles of property (exclusive of the two found on his person) were discovered in his possession.

"These are all identified.

"No. 6 denied his guilt throughout.

"Articles from Nos. 19 to 24 were discovered in his own separate house. Some of these he claims as his own, but they are identified on the part of the prosecutor. This man is clearly the leader of the gang and the other two his employées.

"Prisoner No. 7 is the wife of No. 6. At the thanna she stated that prisoners Nos. 4 and 5 had for some time left their own village and came to live with her husband, and that they had five or six days before brought the stolen clothes, which her husband had given her to keep.

"Before the magistrate she disclaimed this statement, and said that the property had been thrown into her house.

"No. 8. This woman is the niece of prisoner No. 6. From her separate house two articles, Nos. 25 and 26, a brass plate and *lotah*, were found.

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"Before the darogah she said that the plate belonged to prisoner No. 5, and that prisoner No. 4 had concealed it in her house against her will, the *lotah* she claimed as her own; she also stated that No. 4 had brought some stolen clothes and given them to No. 6.

"Before the court all the prisoners plead 'not guilty,' but on being called on for his defence, prisoner No. 4 repeated his acknowledgment of the crime, alleging that he was compelled to commit it by certain other individuals, whom he named. Some of these parties appear to have been apprehended by the magistrate and acquitted.

"The prisoner was warned not to say anything to criminate himself, but he persisted in his narration, and I am inclined to think that this was done under the influence of the prisoner No. 6, who is evidently the leading man.

"Prisoners Nos. 5 and 6 say they were absent when their houses were searched, and know nothing about the matter, except (according to No. 6) that he heard the individual named by No. 4 had thrown the things there.

"Prisoner No. 8 claimed the brass *lotah* and *basin* as her own.

"The defence of the prisoner is in no way established by the evidence.

"The *futwa* convicts prisoner No. 4 of the burglary and theft, Nos. 5 and 6 of receiving stolen property, and acquits Nos. 7 and 8.

"There is an error in the English calendar, which I have brought to the notice of the magistrate. The word '*razdaree*' in the Vernacular calendar having been rendered 'accessary' in the English version, in opposition to the instructions contained in Circular Order, No. 8, of the 7th June 1847.

"As the magistrate was at a distance in the Mofussil, I did not consider it necessary to return the calendar for amendment, especially as on an inspection of the record, it was evident that the graver counts would, if anything was proved, be established against the prisoners.

"There is also an error in these proceedings, which must be noticed, as it is one that may raise a question as to their legality.

"No petition, in conformity to Clause 2, Section II. Regulation II. of 1832, was presented by the prosecutor until the 1st November, the day after the prosecutor had proceeded with the mohurir of the thanna and Toolsee Ram to search the prisoner's house.

"The mohurir of the thanna in his report has misstated the fact and endeavoured to represent that they started for the purpose of search in conformity with the petition of the prosecutor.

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Case of KUNNIAH RAE and others.

"As the prosecutor, however, had before filed a list of the stolen property, and stated that when he obtained a clue he would present a petition, and as the case seems to have been one of emergency in which delay might have been fatal, I do not consider this informality sufficient to vitiate the proceedings, but I have brought the circumstance to the observation of the magistrate that he may take such notice as he thinks proper of the mohurir's mendacity."

Sentence passed by the lower court.—Prisoner No. 4, to be imprisoned with labor and irons for five (5) years; No. 5, to be imprisoned with labor and irons for three (3) years, and No. 6, to be imprisoned with labor and irons for four (4) years, from the 10th of December 1851.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner No. 6 has appealed. He urges that the accomplices named in the confession of No. 4, maliciously introduced the stolen property into his house. The prisoner No. 4, who acknowledged his guilt at the trial, and prisoner No. 5 resided with the prisoner No. 6, and were apprehended in his house; this circumstance, taken with the finding of the stolen property, Nos. 1 to 26, in the house and premises of No. 6, warrants a violent presumption that he received the property, knowing it to be stolen.

"I see no reason to doubt the justness of the conviction and sentence. The sessions judge has been already called on to explain why the prisoner, whom he considered to have been the leader and instigator of the burglary, should have been sentenced to a less punishment than the prisoner No. 4."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

RAM KISHOB CHUCKERBUTTY

versus

GOUR MOHUN DEB.

1852.

March 19.

Case of GOUR MOHUN DEB.

An appeal rejected. A confession alleged to have been extorted, having been proved to have been given voluntarily.

CRIME CHARGED.—Burglary by cutting the *tattee* of the house of his master, and theft of cash and property valued at rupees 265-14-0; 2nd count, knowingly receiving and possessing stolen property obtained by the above burglary and theft.

CRIME ESTABLISHED.—Burglary.

Committing Officer, Mr. R. C. Raikes, magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 12th January 1852.

Remarks by the sessions judge.—"The prosecutor's house was entered by cutting the mats during the night of the 25th October, and a brass *lotah*, which had been buried, was found to have been dug up. Having a short time before dug it up and returned it, the place might have had a fresh appearance, and so given a clue to the prisoner, his servant, who was suspected, apprehended at once, and gave up from under a heap of jute in his house the *lotah* with rupees 188, which he said was all he had got. The prisoner also confessed in the Mofussil and before the magistrate having committed the burglary with another person. Before this court he said the *lotah* and money had been left with him by an aunt when she went to Moorshedabad, and that the prosecutor, who was his spiritual guide, hearing of her death, had demanded her property, and not giving it had falsely charged him with the crime, and named witnesses to prove that his aunt had left the money with him, none of whom corroborated his statement. The *futwa* of the law officer convicted the prisoner of burglary in which I concurred."

Sentence passed by the lower court.—Imprisonment with labor in irons for the period of seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner alleges, in appeal, that the confession in the Mofussil was extorted from him by the police, but the contrary is on record in evidence. The appeal is rejected as totally groundless."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

SHEIKH RHAMUT

versus

SHEIKH AMEER (No. 2).

CRIME CHARGED.—Wilful murder of Jowlashee Bewah.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. R. C. Raikes, magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 12th January 1852.

1852. March 19. Case of SHEIKH AMEER.

Asserted enmity and consequent false accusation rejected as a ground for appeal in a case, in which the prisoner had confessed to the darogah and to the magistrate.

Remarks by the sessions judge.—" From the evidence of the eye-witnesses, it appears that the deceased, mother of the prosecutor, used to be constantly quarrelling with prosecutor's wife, the prisoner's daughter, and that on the night when the deceased was killed, a dispute arose between deceased and prisoner, in which he struck her three blows with a piece of bamboo and gave her a kick, from the effects of which she died immediately, and the evidence of the civil surgeon shows that death was caused by rupture of the spleen, which was diseased, over which there was a mark of a severe bruise and also one on the chest. The prisoner in the Mofussil and before the magistrate admitted having given the deceased a kick, from the effects of which she died immediately. In this court he said the case had been got up against him by Aheer Sircar, because he would not allow his son to work for him, and named witnesses to prove that deceased had a diseased spleen, whose evidence it was considered unnecessary to take as the fact was proved from the evidence of the prosecutor and his witnesses and that of the civil surgeon. The *futwa* of the law officer convicts the prisoner of culpable homicide in which I concurred."

Sentence passed by the lower court.—To be imprisoned without irons for the period of one (1) year and to pay a fine of rupees twenty-five (25) on or before the 12th February 1852, or, in default of payment, to labor until the fine be paid or the sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" The prisoner appeals, alleging that the charge has been brought against him by the machination of his enemies. This, under the circumstances of the case stated by the sessions judge, is a futile ground of appeal. The prisoner confessed to the darogah and to the magistrate. It is therefore rejected."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

SUKHA BANGALEE

versus

SHEIKH USHKUR (No. 3), SHEIKH PUNNAOOLLAH (No. 4), SHEIKH BABOOLLAH (No. 5), SHEIKH MONGLAH (No. 7), SHEIKH BHYRUB (No. 8, APPELLANTS), SHEIKH SHADOO, ALIAS SHATOO SHAH (No. 2) AND SHEIKH HANEEF (No. 6).

1852. March 19.

Case of SHEIKH USHKUR and others.

Sentence of one year's imprisonment for culpable homicide considered lenient.

CRIME CHARGED.—Nos. 2 to 8, 1st count, wilful murder of Sheikh Jumaldee; 2nd count, being accomplices in the above murder.

CRIME ESTABLISHED.—Against No. 2, culpable homicide of Sheikh Jumaldee, and against Nos. 3 to 8, being accomplices and aiding and abetting in the same.

Committing Officer, Mr. R. C. Raikes, magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 4th December 1851.

Remarks by the sessions judge.—"From the evidence of the eye-witnesses, corroborated by others, one of whom saw all the prisoners running together armed with sticks into a hemp field, where they lost sight of them, into which it is probable that the deceased had gone with witness No. 24, sister of prisoner No. 2, for the purpose of criminal intercourse, for her account of the matter, *viz.*, that he seized her at a well and pulled her by a cloth at a distance of about two hundred yards, she calling out all the time, is very improbable, it is proved that they all beat the deceased; and the evidence of the civil surgeon shows that death was caused by a fracture of the skull (of which he died during the night); that he had received a lacerated wound on another part of the head, which was severely bruised all over. The prisoner No. 2 admitted in the Mofussil and before the magistrate, that he was at work at No. 4's house, and seeing deceased pull the cloth of his sister, witness No. 24, and pull her towards his *baree*, he struck him with a slight stick, produced in court, after which the other prisoners came and that deceased had been wounded by witness No. 2, with his brother's *koralee*, and says that deceased had seized his sister because she objected to and prevented a marriage he proposed. In this court he said that the deceased had knocked him down and fell upon him when witness No. 2, striking at him with a *koralee*, hit the deceased, and named witnesses to prove that witness No. 1 has no land, and that he has enmity with that person's talookdar, which they

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could not prove. No. 3, that the charge had been brought against him because he had got a decree against the prosecutor, and alleged he was elsewhere, but declined taking the evidence of his witnesses. No. 4, an *alibi* of which his witnesses knew nothing. No. 5, an *alibi*, quarrel with the prosecutor, and that he had demanded money from him. His witnesses could not say where the prisoner was, but state that there is an hereditary quarrel between the prosecutor's family and the prisoner, and one of them said the prosecutor had asked the prisoner for money to settle the case. No. 6, that the prosecutor had demanded money from him, and not paying it, he had caused him and his son No. 7 to be apprehended, and enmity with Ram Soondur Biswas, no part of which was corroborated by his witnesses. No. 7, the same as regards the money and being ill of fever; that witness No. 1 did not at first say that he saw them beat the deceased, and that the darogah did not take his evidence till the next day after threatening the witnesses. One of his four witnesses, a connexion of both parties, said he saw the prosecutor demand rupees 25 from the prisoner No. 8; that his father No. 3 had got a decree against the prosecutor, and that he had offered to let them go if it was given up; two of his four witnesses said the prosecutor had asked for the decree, these are the same persons who have deposed to the demand of money from two of the other prisoners. The *futwa* of the law officer convicts No. 2 of culpable homicide and the other prisoners of being accomplices therein, in which I concurred."

Sentence passed by the lower court.—Each to be imprisoned for one (1) year and to pay a fine of rupees fifty (50) on or before the 4th January 1852, or, in default of payment, to labor until the fine be paid or the term of the sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoners have in their petition of appeal only reiterated the substance of their defence. They have been convicted on sufficient proof; and even admitting the alleged provocation to one prisoner, a lenient sentence has been passed against him. It is too lenient perhaps as regards the other prisoners. The appeal is rejected."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

SADAH GAZI (No. 19), MONA GAZI (No. 20), BINDOO (No. 21), NAZIR MAHOMED (No. 22), GAZI (No. 23), KAMAL (No. 24), HILAL GAZI (No. 25), MOHURRUM (No. 26), JELAL (No. 27) AND JAN MAHOMED (No. 28).

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On a charge of culpable homicide by beating, the assistant surgeon, who examined the body, deposed that he found no external marks of violence sufficient to cause death, and that it was not at all probable that death could have been produced by violence, the marks of which were not traceable. The court, therefore, found the prisoners guilty only of an assault.

CRIME CHARGED.—1st, culpable homicide of Gowrishah Fuqeer, *alias* Roshun Fuqeer; 2nd, being accomplices in the above; 3rd, committing a severe assault upon Gowrishah Fuqeer, *alias* Roshun Fuqeer; 4th, being accomplices in the above.

Committing Officer, Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, officiating sessions judge of Tipperah, on the 20th February 1852.

Remarks by the officiating sessions judge.—"The deceased Gowrishah *alias* Roshun Fuqeer, appears to have been detected about midnight of the 17th of January last, in an attempt to steal some grain, the property of Gazi (prisoner No. 23). He was beaten on the spot, though apparently with no great degree of severity, but instead of releasing or making him over to the village chowkeedar, certain of the prisoners insisted on his accompanying them to his home. He seems to have been reluctant to follow them, and while crossing a plain they again beat him, until, according to the confessions of some of the accused, he fell to the ground and lay there speechless. Here and in this state they left him, and here his body was found the following morning.

"The witnesses to the fact were, with one exception, implicated in the first instance in common with the prisoners under trial, but the magistrate finding no sufficient proof against them admitted them as witnesses. The exception referred to is the fifth witness Kholashah who is the wife of the prisoner Gazi.

"The following is an analysis of the evidence rendered as brief as I can make it, compatibly with furnishing a correct idea of the amount of proof against each prisoner.

"Jewun Sonar, the first witness, was aroused by the disturbance at the prisoner Gazi's house. He went there and found that Gazi (No. 23), Bindoo (No. 21), Hilal Gazi (No. 25), Mona Gazi (No. 20) and Mohurrum (No. 26) were beating the prisoner, who had been detected stealing Gazi's (No. 23) grain, with their fists and open hands. Sadah Gazi (No. 19) and Jan Mahomed (No. 28), with others, whose names it is not

necessary to mention, were standing around. The witness remonstrated with the prisoners but without effect, and after remaining a short time returned to his own house. The next morning he heard that deceased had been found lying dead on the plain near the village. He was about forty-five or fifty years of age and a healthy man of average strength.

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"Mokim, the second witness, was attracted to Gazi's (No. 23) house by the same cause. Gazi (No. 23) had hold of the deceased who was lying on the ground. The persons present made the deceased stand up, and Jelal (No. 27), Sadah Gazi (No. 19), Mohurrum (No. 26), Kamal (No. 24), Nazir Mahomed (No. 22), Jan Mahomed (No. 28), Hilal Gazi (No. 25), Mona Gazi (No. 20), Bindoo (No. 21) and Gazi (No. 23) beat him with their clenched and opened hands. This witness also after a time returned home and heard the following day that the deceased was lying dead on the plain. He described the fuqeer as being, while living, a healthy man, and added that his character previous to this occurrence was good.

"Kurrim, the third witness, is the first witness' servant and appears to have gone to Gazi's house after his master had left it, being asked to do so by the prisoners Kamal (No. 24), Nazir Mahomed (No. 22) and Jan Mahomed (No. 28). He saw Hilal Gazi (No. 25) and Mona (No. 20) beating the deceased and upbraiding him with his attempted theft. Gazi (No. 23), Jelal (No. 27), Sadah Gazi (No. 19), Mohurrum (No. 26) were sitting around. Witness remarked, when leaving, that deceased was getting rather exhausted (*nurrum* is the word used).

"Kallye Chung, the fourth witness, found the deceased held by Mona Gazi (No. 20), who had twisted a cloth round his neck, Bindoo (No. 21), Gazi (No. 23), Hilal (No. 25) and Jelal (No. 27) were beating him. Before the magistrate this witness added the name of Mohurrum (No. 26). He left and shortly afterwards Mohurrum (No. 26) and Mona Gazi (No. 20) came and invited him to return, stating that they had not yet rendered the deceased *nurrum* by the beating they had inflicted on him.

"Kholashah, the fifth witness and wife of Gazi (No. 23), deposed chiefly to the seizure of the deceased by her husband, whom she awoke and informed that a thief was stealing his grain. The villagers beat him, but before the sessions judge she mentioned no names, having, however, done so before the magistrate. Being wife of one of the prisoners she was not pressed on this point beyond being asked the reason of this discrepancy in her evidence, when she denied naming any one to the magistrate.

"I beg at this stage of my report to make a few observations regarding the nature of the evidence of these witnesses. It will be observed that there is some variation in it as to the share taken by each prisoner in the maltreatment of the deceased and

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also in the names of those present. But the witnesses appear not to have been at Gazi's house together or at the same time, and it is presumable that the scene in it underwent occasional changes. I may add that they were very unwilling witnesses, and evidently recollected with apprehension their former position in the case. I now come to the confession of the prisoners, on which, in fact, the case mainly rests.

" Sadah Gazi (No. 19), confessed at the thanna and before the magistrate to having been present at Gazi's house when deceased was first seized and beaten, and to having been one of the party who insisted on his accompanying them to his own house. While crossing the plain, the deceased (who appears to have mistrusted their purpose) refused to proceed further and Kamal (No. 24), Hilal Gazi (No. 25), Mona Gazi (No. 20) and two others not included in the indictment then beat him until he fell to the ground speechless, and merely breathing. This prisoner and the rest left him there and went to their homes. The next day they heard of his death.

" His defence before me was that although he accompanied the party who took the deceased in the direction of his home, Anwar, and not he, ill-treated the fuqeer.

" Mona Gazi (No. 20), confessed both at the thanna and before the magistrate to having been present when the deceased was first maltreated at Gazi's house, and also to having formed one of the party who insisted on his going home with them. But he stated he returned almost immediately, having gone with them only part of the way. He denied ill-treating the deceased, and to this statement he adhered in the sessions court.

" Bindoo's (No. 21) confessions at the thanna and before the magistrate are explicit, both as regards his presence when the deceased was first beaten and on the point of his having formed one of the party who accompanied the deceased to the plain and there again beat and left him speechless. Before me he denied all participation in the ill-treatment of deceased.

" Nazir Mahomed (No. 22) confessed at the thanna being one of those who accompanied the deceased to the plain where he was found dead, and who there took a part in ill-using him until he fell to the ground apparently senseless. Before the magistrate he denied being an agent in the beating, but in other respects his confession was in the main similar to what he uttered at the thanna.

" Before the sessions court he only admitted having gone to Gazi's house, but denied ill-treating the deceased or going with the rest to the plain.

" Gazi (No. 23) confessed at the thanna to having beaten the deceased after detecting him in the act of stealing grain. Ram Chung striking him once with a *moosul* (a heavy staff headed with iron and used to pound grain).

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"Before the magistrate he implicated others as having maltreated the deceased, but denied being himself one of the number.

"Before me he admitted having accompanied the party to the *maidan*.

"Kamal (No. 24) confessed at the thannah having kicked deceased when the prisoners were conveying him home, and having been present when Anwar ill-treated him on the *maidan* where he was left insensible. Before the magistrate he admitted having accompanied the rest when taking the deceased towards his home and having on the road kicked him. He added that when on the plain he remained apart while the deceased was beaten by Anwar and fell senseless.

"Before the sessions court he retracted all his previous admissions.

"Hilal (No. 25) confessed both at the thanna and before the magistrate to having beaten the deceased in the first instance, but denied having gone with the other prisoners when they left Gazi's house to proceed to the fuqeer's home. His defence before me admitted being present only when deceased was first beaten.

"Mohurrum's (No. 26) confessions both at the thanna and before the magistrate were to having been one of the prisoners who beat the deceased at Gazi's house, and subsequently took him to the plain where he was found dead.

"Jelal (No. 27) confessed both at the thanna and before the magistrate to having been present where the first beating was inflicted and to having taken a part in the maltreatment of the deceased. He also admitted before the magistrate having been one of the prisoners who accompanied the fuqeer a part of the way to the plain.

"Before the sessions court he stated he was merely present on the first occasion, but took no share in beating the deceased. He admitted having confessed as stated at the thanna and before the magistrate.

"Jan Mahomed's (No. 28) confessions amounted simply to being present when the deceased was first beaten, and to this he adhered in my court.

"The medical officer, Mr. Assistant Surgeon Williams, examined the body of the deceased and furnished the following opinion:—

'I have the honor to state that I have examined the body of 'Gourishah Fuqeer and found no marks of violence sufficient 'to account for death.'

"This case, if defective as regards evidence to the fact of the closing violence to which I consider the death of the Fuqeer Gourishah attributable, is in my opinion supported by very strong presumption. A hale man at midnight of the 17th of January, and scarcely passed the meridian of life, was found dead on the

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following morning, the confessions of the prisoners and such evidence as the case affords showing that intermediately he had been seriously ill-used and forced to the spot where his body was found at daylight of the 18th.

"The civil assistant surgeon detected no external marks of injury sufficient to account for the death, but his examination of the corpse appears to have been very superficial, in consequence of the magistrate's neglect of his duty in not furnishing him with the information pointed out as necessary by Circular Order.

"But it is impossible to account for death in this case on any other presumptions than that some mortal inward injury was sustained, or that the deceased expired in consequence of the long-continued ill-treatment under which exhausted nature sank.

"At the least the case appears to be one of savage resentment for no very heinous offence, and the chastisement inflicted to have been unnecessary and cruel,—unnecessary, because although detected in an attempt at theft, he was unresistingly in the prisoners' power; and cruel, because it ended only with his death.

"The Mahomedan law officer, who assisted me in holding this trial, finds the prisoners Sadah Gazi (No 19), Bindoo (No 21), Kamal (No. 24), Mohurrum (No. 26), Gazi (No. 23), and Nazir Mahomed (No. 22) guilty on the 2nd count, that is, guilty of being accomplices in the culpable homicide of the deceased. Hilal Gazi (No. 25) and Jelal (No. 27) he convicts on the 4th count, that namely, of being accomplices in severe assault. Mona Gazi (No. 20) and Jan Mahomed (No. 28) he acquits on the ground of deficiency of proof of their guilt.

"The material difference of opinion between the law officer and myself regards the prisoner Mona Gazi (No. 20), for although I consider the six prisoners first named to be guilty on the first instead of the second count and Hilal Gazi and Jelal on the third instead of the fourth, this the court have decided by their Resolution,* No. 1119, dated the 11th October last, not to

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**Resolution of the Nizamut Adawlut, No.* 1119, *dated* 11*th October* 1851; *present Mr. A. J. M. Mills.*

The court, having perused the papers connected with the trial of Petumber Chowdry and others, observe that the sessions judge has referred the case, because he convicts the prisoners of resistance of process in assaulting the police in the execution of their duty and rescuing from their hands an absconded offender, as *principals*, and the law officer finds them guilty of the same offence as *accomplices*. They do not consider this to be a legitimate ground of reference, as no distinction between principals and accomplices is recognized in the Regulations, accomplices being liable to the same punishment as principals. It is, moreover, within the competency of the sessions judge to pass the sentence which he considers adequate to the guilt of the prisoners. The court, therefore, direct that the proceedings be returned to the sessions judge with instructions to dispose of the case himself.

be a legitimate ground of reference, the liability to punishment under both counts being the same. But I cannot concur in the law officer's acquittal of Mona Gazi, the proofs against whom, briefly summed up, are as follows:—The three witnesses, No. 71, No. 72 and No. 74, state that he was one of the prisoners who beat the deceased at Gazi's house. The fourth witness (No. 73) not only testifies to the same effect, but declares that Mona Gazi was one of the party who accompanied the deceased, or rather took him away to the plain. Witness No. 74 names the prisoner also as one of the two who came to his house and urged him to return with them, as the beating they had inflicted on the fuqeer had not yet rendered him *nurrum*. Coupling with this evidence his partial confessions at the thanna and before the magistrate, I can see no difference between his guilt and that of his fellow prisoners whom the law officer convicts of complicity in the culpable homicide of the deceased.

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"I would recommend that the prisoners Sadah Gazi (No. 19), Bindoo (No. 21), Kamal (No. 24), Mohurrum (No. 26), Gazi (No. 23), Nazir Mahomed (No. 22) and Mona Gazi (No. 20), whom I consider to be convicted of the culpable homicide with which they are charged, should be sentenced to five (5) years' imprisonment with labor in irons. Hilal Gazi (No. 25) and Jelal (No. (27), whom I find, in concurrence with the law officer, guilty on the third count of committing a severe assault upon deceased, to one (1) year's imprisonment and a fine severally of twenty-five (25) rupees, and, in default of payment, to labor in irons.

"Jan Mahomed (No. 28) I would also, in agreement with the law officer, acquit.

"I have called on the magistrate to account for his neglect of the Circular which rendered it incumbent on him to furnish the civil assistant surgeon with all available information relative to the cause of death. Had this been attended to, a light might have been thrown upon the case of great importance to the ends of justice."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"As the trial was referred only as respects the prisoner Mona Gazi, whom the sessions judge convicts contrary to the opinion of the law officer who sat on the trial, the sessions judge should have passed sentence on the other prisoners according to the provisions of Section VI. Regulation LIII. of 1803, and Clause 3, Section IV. Regulation IX. of 1831. As, however, the view of the case taken by this court is dissimilar from that taken by the sessions judge, the whole proceedings are now revised under the power vested in it by Clause 6 of the last quoted Section.

"The assistant surgeon in his deposition has stated—'I 'found no external marks of violence at all sufficient to account

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'for death'; and in answer to the question, 'Is it possible that 'the deceased should have died of maltreatment and no outward 'marks be visible?' He replied, 'It is possible, but not at all 'probable, especially if the instrument used was the *moosul* now 'shown me.' None of the witnesses assert that any weapon or stick was used; and only one prisoner, and that in his thanna confession, admits that the blows were other than slaps and kicks. In the confession alluded to, a *chekat* not a *moosul*, as described in the sessions judge's letter, was said to have been used. Under these circumstances it appears proper to convict all the prisoners only of the third count, *viz.*, 'committing a 'severe assault upon Roshun Fuqeer.' No distinction in the degree of guilt of the prisoners is clearly traceable. They are, therefore, all sentenced alike, *viz.*, to two (2) years' imprisonment, and to payment of a fine of rupees twenty-five (25) each within ten days, commutable, on non-payment, to labor.

"The court is at a loss to understand on what ground the law officer acquitted Mona Gazi. The *futwa* does not set it forth. The law officer should have been required to state his reasons."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

NUTHUIRAM BRAHMIN

versus

CHOTOO SONAR (No. 3), JOWAHIR SONAR (No. 4) AND JOKTEE SONAR (No. 5).

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The prisoners were convicted of aggravated culpable homicide, and sentenced to fourteen years' imprisonment each, in banishment with labor in irons.

CRIME CHARGED.—1st count, wilful murder of Gopal Dass; and 2nd count, severely beating the deceased with iron tongs, *lohangee* and *lattee* with intent to murder him.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 2nd February 1852.

Remarks by the sessions judge.—"The deceased was priest and physician to the three prisoners, father and two sons, residing in the village of Neiylee, which the deceased had visited several days prior to the occurrence, as he had been in the habit of doing for many years past. On the afternoon of the 1st December last, the deceased had started from Neiylee for Gya, when the prisoners following brought him back to prescribe for the daughter, Musst. Koilee (witness No. 11). The deceased was either unwilling or unable to do so, when the prisoners, fastening the only entrance door of their house facing the lane to the eastward, commenced beating the deceased, whose cries, alarming the village, brought up Heeramun Singh (witness No. 2), the

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burrail of the village, who, accompanied by Sibbun Goalah (witness No. 1) and Bhuwanee Dosadh (witness No. 3), finding it impossible to obtain admittance by the entrance door, went round to the western wall, and climbing over it saw the three prisoners had beaten the defenceless deceased senseless. Chotoo (prisoner No. 3) being armed with a loaded club, Jowahir (prisoner No. 4) with a club, and Joktee (prisoner No. 5) with a pair of pincers. The prisoners threw these arms into their dwelling, and they have not been since forthcoming. The prisoners were at once apprehended and information duly lodged at the thanna through Bhikharee Chowkeedar (witness No. 12) of the village.

"Witnesses Sibbun (No. 1), Heeramun (No. 2), Bhuwanee (No. 3) and Bhikaree (No. 12,) depose to the foregoing particulars.

"The deceased lived to give his deposition before the police the same day, the 1st December last, No. 2 and before the law officer the next day, the 2nd idem, No. 7. He died the following day, the 3rd idem, from the effects of the barbarous maltreatment he had undergone. The Mofussil inquest gives no more than eleven external marks of violence, and Dr. Diaper deposes to two lacerated wounds of two inches in length and two lacerated wounds of about one inch in length, all on the face, which by the violence of the infliction had caused inflammation of the left eye. He was also bruised more or less all over his body. The *post mortem* examination of the body disclosed great congestion of the brain, chest and abdomen, with bloody effusion into the cavity of the skull, as also into the cavity of the abdomen and the three lower ribs of the left side were completely fractured. The appearance is sufficient to account for speedy death. The deceased must not only have been very severely beaten but the beating evidently continued for a considerable period of time.

"The three prisoners confessed before the police, Chotoo taking the blame of the beating on himself, and Joktee attributing it to his two sons. Joktee's defence before the magistrate was much to the same effect, but Chotoo and Jowahir modified theirs to their only having beaten the deceased with their hands. Chotoo then for the first time setting up the pretence that while the deceased was endeavouring to escape from him, he fell and struck himself against a stone. Before this court they all plead 'not guilty,' all however still adhering to the same silly story of the deceased having come by his death by falling, and Chotoo assigning frivolous malicious motives to the three eye-witnesses. They called four witnesses, none of them of their own village, but residents of different places, who even knew nothing in their favor. According to the prisoners' statements on each occasion, Musst. Koilee's (witness No. 11) sickness and the deceased being called in to prescribe for her, are acknowledg-

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ed, with the addition before the police that the deceased had administered some white powder, which, from the ill-effects that followed, they suspected of having been poison. This pretence was, however, at once upset by the naib darogah's visit to Musst. Koilee, the next day, the 2nd idem, *vide* her deposition of that date No. 11. Dr. Diaper found her the same day laboring under a low type of remittent fever, *vide* his No. 162 of that date. After a few days' treatment she was discharged from hospital perfectly cured, and she appeared in perfect health before this court.

"The *futwa* of the law officer acquits the prisoners of wilful murder, but convicts them of 'culpable homicide' and declares them liable to punishment for the price of blood by '*deeyut*.'

"The occurrence is generally attributed to the deceased's declining to prescribe for the sick girl Musst. Koilee, but before the police the deceased also added 'for suspecting him of 'witchcraft.' There had been casualties amongst the prisoners' family, which, in the total absence of any other known or expressed motive, may have worked upon the prisoners lamentably ignorant prejudices to take their priest-physician to task, beating in this, as in other countries of old, being considered a sovereign remedy against witchcraft. The prisoners' violent conduct is otherwise unaccountable and criminal in the highest degree. The brutality of the beating, and the impossibility of the deceased's having come by his death in the absurd manner pretended by the prisoners, is vouched for by the autopsy. Dr. Diaper in addition to the severity of the beating considers 'it 'must have been continued for a considerable period of time.' Doubtless but for the interposition of the three eye-witnesses murder would have been completed on the spot. The prisoners forcibly brought the deceased to their dwelling, and having deliberately fastened the door, they commenced and continued their brutal maltreatment of the deceased inside their closed premises until the eye-witnesses obtained entry by climbing over the wall. There could have been no sudden impulse here; every circumstance bespeaks deliberate malice aforethought, leaving it only questionable how far such malice arose out of prejudices, which must have been grievously uncontrollable when thus brought to bear against their priest-physician. The occurrence cannot have been less criminal but may have been worse, though the evidence does not reach to this extent. The witnesses depose that Joktee was armed with a pair of pincers, which, as commonly used by Sonars, is too light to account for any of the injuries inflicted on the deceased, and is at the same time adverse to the deceased's singular and more probable statement before the police, when, although accusing both father and sons of having beaten him, but without mentioning the weapons used by the latter, he specified Joktee in particular as having beaten him

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on the face with a hammer. Before the law officer the next day, however, he deposed that all three had beaten him with *lattees*, but I place little reliance on this deposition, as, both from its tenor as well as his death the following day, his mind by that time must have been much confused, at the same time both autopsy and internal evidence corroborate the thanna deposition. The three eye-witnesses also give contradictory evidence relative to the work-shop and tools having been in use at the time of the occurrence. Allowing the prisoners the benefit of every thing dubitive, I concur in the acquittal of wilful murder, but as already shown, consider ample remains to convict them of an utterly inexcusable and highly aggravated culpable homicide, meriting a higher degree of punishment than I am competent to award. Viewing the guilt of the father and his two sons as equal, I would recommend each being sentenced to fourteen (14) years' imprisonment, in banishment, in labor and irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"That the deceased died from the brutal treatment he received is open to no question, and that he met this treatment at the hands of the three prisoners is fully and conclusively established by the declaration of the deceased (which was taken on oath the same day by the darogah, and was repeated before the law officer on the following day), and by the evidence of the witnesses Nos. 1, 2 and 3, who, alarmed by the cries of the deceased, climbed over the walls of the dwelling of the prisoners, and found the three prisoners had beaten the deceased senseless in the court-yard. The defence set up by the prisoners that the deceased fell down and struck himself against a stone is disproved by the medical evidence, and is quite incredible. I do not agree with the sessions judge that the circumstances of the case bespeak deliberate malice aforethought; holding this opinion he should have found them guilty of wilful murder, not of culpable homicide; but in my view of the case the intent to kill is not fairly inferrible from the acts of the prisoners. It is *not proved* that the prisoners forcibly brought the deceased to their dwelling; on the contrary, it appears from the declaration of the deceased that he voluntarily accompanied them there, for the purpose of prescribing for the sick girl. It may, I think, be justly presumed from the deceased's statement, that the assault was suddenly committed under feelings of extreme irritation, engendered by the refusal of the deceased to administer medicine to the sick girl and aggravated by the idea that he practised sorcery. I would treat it as a case of culpable homicide. The deceased was shamefully used, and the prisoners are deserving of severe punishment. Convicting the prisoners, therefore, of aggravated culpable homicide, I sentence them each to fourteen (14) years' imprisonment in banishment, with labor, and in irons."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOWREE KANTO BUTTACHARGEE

versus

KISTO MANNAH (No. 2), SADHOO SINGH (No. 3) AND SEEBOO SINGH (No. 4).

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The only proof adduced against the prisoner No. 2, being his Mofussil confession, he was acquitted.

The prisoners Nos. 3 and 4 were convicted on their confessions in the Mofussil and before the magistrate, and on production of stolen property which they had concealed. They were servants of the prosecutor's establishment and sentenced as recommended by the sessions judge.

CRIME CHARGED.—The prisoners Nos. 2, 3 and 4, are charged with having committed a theft in the house of the prosecutor, and feloniously stolen therefrom property belonging to the prosecutor, valued at rupees 1,382-8-0, as well as property belonging to Gobind Chand Chuckerbutty (witness No. 29), valued at more than rupees 340-11-3, being at the time in the service of the prosecutor and entrusted with the custody of the said property; 2nd count, with aiding and abetting as accomplices in the above theft; and 3rd count, with knowingly retaining in their possession property acquired by the above theft.

CRIME ESTABLISHED.—Prisoners Nos. 2 and 3, theft; and prisoner No. 4, aiding and abetting as accomplice in the theft.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 8th December 1851.

Remarks by the sessions judge.—"The circumstances attending this trial are as follow:—On the night of the 3rd June 1851, the prosecutor was roused out of his sleep by some one exclaiming that some person or persons had been out of the house. On examining the room in which a large trunk was kept, a door communicating with the yard, which had remainad closed for some years, was found open, but how, was not apparent, as neither the door nor its lock bore any marks of violence. The prisoner Kisto Mannah, in whose charge the key of the box was, opened the latter, when it was discovered that three smaller boxes containing money and jewels, the keys of which were in possession of prosecutor and his nephew, were missing. The prisoner Kisto Mannah feigned great distress at what had happened and threw himself at his master's feet. The police were summoned and after considerable delay made their appearance (though the thanna is within the call of the prosecutor's house). The only traces of the theives discoverable were the three boxes in a field a short distance from prosecutor's house, broken open, and the contents gone, with the exception of some papers and half bank-notes which had been thrown away as useless, and a rupee of the Assam coining. Nothing more was heard of the robbery till the 22nd of September. On the evening of that day, the

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prisoner Sadhoo Singh No. 3, was seen to enter the house of Lukhun Mytee, the witness, No. 35, with a box under his arm, by the police of the village. As he was known to have been discharged from prosecutor's service after the theft occurred and afterwards to have set up a shop in a bazar at Tumlook, and as he had been previously in indigent circumstances, their suspicions were excited and communicated to the burkundauze of the neighbouring *pharee*, who, accompanied by the village police, proceeded to Sukhun Singh's house and arrested Sadhoo, who, after a little hesitation, produced the box he had in his possession. On opening it sundry silver articles, money, &c., were found, which the prisoner Sadhoo then admitted were part of the property stolen from his late master, the prosecutor. The darogah was then summoned to the spot, to whom he confessed that the prisoner No. 2 Kisto Mannah, himself, the prisoner Seeboo Singh, Lall Chuprassee and one Hurree Koomar agreed to rob their master; that on the night of the 22nd Jeyt, they all went into the room where the prosecutor's trunk was kept; that the prisoner Kisto Mannah opened the latter with the key in his custody; that they took out three boxes and carried them outside into a field to the west of the house, broke them open with instruments supplied by Kisto Mannah and Hurree Koomar and divided the contents into four portions and hid them in the jungle, and threw away the papers which they deemed useless; that Kisto and he then returned to the house and raised the alarm of thieves to quell suspicion. On this confession the prisoners Kisto and Seeboo were arrested when they also admitted their complicity in the robbery. Seeboo Singh produced from the jungle his share of the plunder, but as Kisto Mannah had deposited his with other parties who denied all knowledge of it, it could not be traced; all these circumstances are fully corroborated by the evidence. The three prisoners confessed before the darogah. The prisoner Kisto Mannah retracted his before the magistrate, the other two adhering to their original statements. Before this court they all plead 'not guilty,' and cite witnesses to character. The prisoner Kisto, pleads that the other two prisoners had stated in the presence of other persons in *hajut*, that he, Kisto, had not participated in the theft and they were summoned to give their evidence; it is, however, conflicting, and in no way impugns that for the prosecution. The assessors, with whose aid the trial has been conducted, declared the prisoners guilty of the charges preferred against them. No. 2, Kisto Mannah, and Sodhoo Singh No. 3, as principals, and Seeboo Singh No. 4, as an accomplice. I concur in this finding. The guilt of all three prisoners is in my opinion clearly established. Nos. 2 and 3 are liable to the penalty prescribed in Section IX. Regulation XIII. of 1850, for having, as servants of the prosecu-

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tor, feloniously stolen property entrusted by him to their care, and the prisoner No. 4 as an accomplice in aiding and abetting the above two principals in their unlawful acts. They are therefore sentenced as indicated in the body of the statement. The magistrate's attention will be drawn to the careless and reprehensible manner in which the darogah drew up the *sooruthal;* one of the witnesses represented as having certified it, deposes that he knows nothing of the contents of the *sooruthal,* as it was not read over to him; another, that he signed it by order of the darogah without being at the local inquiry or knowing when the *sooruthal* was written, which was neither read nor explained to him."

Sentence passed by the lower court.—Prisoners Nos. 2 and 3, to seven (7) years' imprisonment, and prisoner No. 4, to five (5) years' imprisonment, all with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.,)—" This robbery took place in June last year. The three prisoners are prosecutor's servants. Kisto Mannah, prisoner No. 2, was suspected by the police at the time, but was not charged by the prosecutor, who however dismissed him. Prisoner No. 3, Sadhoo Singh, a punkah bearer, was also dismissed, and it appears that he, after the theft, commenced business as a shopkeeper in the bazar, a circumstance which drew the attention of the people. He was seen in September last to enter the house of one Lukhun Mytee with a box concealed under his clothes. This box he produced and confessed that the cash and ornaments it contained belonged to the prosecutor. Prisoner No. 4, Seeboo Singh, the prosecutor's chuprassee, also confessed before the police, and both Nos. 3 and 4 confessed to the theft before the magistrate. Prisoner No. 2 did not so confess. The circumstance which chiefly bears against him is the fact that he had charge of the large box which contained the three small boxes, in which the cash and ornaments were deposited; neither the key nor the lock of the large box was at all injured or tampered with, though the small boxes were abstracted. The prisoners Nos. 3 and 4 may have procured a duplicate key, indeed one of the witnesses for the defence, Nobin, who was in *hajut,* in another case, has sworn that he heard them tell prisoner No. 2 that they had procured another key. There is then only the Mofussil confession of the prisoner No. 2 against him. I do not think it would be safe to convict upon that alone, and therefore give him the benefit of the doubt. He must be acquitted and released.

" The prisoners Nos. 3 and 4 are fully convicted on their confessions, and on the production of property sworn to by prosecutor and his witnesses, and to which the prisoners prefer no claim. There is no difference in the guilt of these prisoners: both confess to the theft, both were servants and both shared in

the spoil. The sessions judge has convicted No. 3 as a principal, and No. 4 as an accomplice only; and has awarded sentences in proportion to his estimation of their guilt. The prisoners have appealed; the sentence therefore of the prisoner No. 4 cannot be enhanced by the court. The sessions judge's orders are confirmed."

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PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

SHEIKH BOKRA (No. 18), SHEIKH MOGUL (No. 19), SHEIKH WOOMUR (No. 20), SHEIKH HOBEE (No. 21), SHEIKH WOZEER (No. 22), SHEIKH MOLAMDEE (No. 23), SHEIKH ALLUM (No. 24) AND SHEIKH KULLUN (No. 25).

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Sentence of one and two years' imprisonment for culpable homicide, by beating a thief to death, deemed lenient.

CRIME CHARGED.—Nos. 18 to 21, wilful murder of Chotoo Sheikh, and Nos. 22 to 25, 1st count, wilful murder of Chotoo Sheikh, and 2nd count, accessaries before and after the fact to the above crime.

CRIME ESTABLISHED.—Culpable homicide of Chotoo Sheikh.

Committing Officer, Mr. A. Abercrombie, assistant with powers of joint magistrate, Jumalpore, Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 23rd December 1851.

Remarks by the sessions judge.—"From the confessions in the Mofussil and before the assistant, it appears that the prisoners Nos. 18, 19, 20, 21 and 22 caught the deceased in the night stealing the *dhan* of No. 19, on which they all beat him, and after a time, on his entreaties, they let him go. In the meantime, the other prisoners, father and two sons, came up, followed the deceased, beating him as he went, saying 'you won't allow 'Kitabdee to work, and come stealing.' These prisoners denied all along; but what is stated regarding them in the confessions of the other prisoners is corroborated by the deceased's dying statement, and by witnesses who had seen him in their company, near their house. The deceased managed to get close to a cow-house and fell. He was heard groaning by the persons inside, and on their going to him said, those persons had killed him, and died very shortly after. These prisoners I have considered deserving of more punishment than the others, because, at the time they beat him, he had committed no injury against them, and they beat him because he was supposed to have prevented his son-in-law, Kitabdee, working with regularity for No. 23,

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from whom he had borrowed money for his marriage. Their defence was, that they had been apprehended by the villagers out of spite; and that of the confessing prisoners, that they did not beat the deceased; none of which was alleged by the witnesses. The *futwa* of the law officer convicts all the prisoners of culpable homicide, in which I concurred."

Sentence passed by the lower court.—Nos. 18 to 22, each, one (1) year's imprisonment, without irons, and a fine of rupees twenty-five (25) or to labor, and Nos. 23 to 25, each, two (2) years' imprisonment and a fine of rupees fifty (50) or to labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" The offence has been fully established against all the prisoners, and the sentence passed on them is a lenient one. I see no reason to interfere in their favor, and, therefore, reject the appeal."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

SHEIKH MADAREE

versus

HARRACHAND DULLYE.

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Case of HARRACHAND DULLYE.

Sentence of sixteen years passed on a chowkeedar for dacoity, confirmed.

CRIME CHARGED.—Dacoity attended with wounding.

CRIME ESTABLISHED.—Dacoity attended with wounding, while employed as a village chowkeedar.

Committing Officer, Mr. E. Jenkins, magistrate of Howrah.

Tried before Mr. H. T. Raikes, sessions judge of 24-Pergunnahs, on the 2nd December 1851.

Remarks by the sessions judge.—" The prisoner pleaded 'not guilty,' but the following facts were adduced in evidence before me. The prosecutor's house being attacked by dacoits, his son opposed them armed with a piece of bamboo, until the bamboo was broken and he was driven into one of the huts by three of the dacoits, who pressed him hard, and had already wounded him in three places, when the prosecutor, having armed himself with a spear, came behind the dacoits, and thrusting the weapon towards them, wounded one between the legs, on the inside of the thigh, under the fork. This resistance alarmed the dacoits, who made off, taking with them the wounded man, but leaving the prosecutor's property untouched. As soon as the police were made aware that one of the dacoits was wounded, they prosecuted inquiries, and soon heard that the prisoner (who was chowkeedar of a neighbouring village) had been absent from his post on the night in question, but was said by his

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family to have gone from home to his *mamoo's* house. On searching his house he was discovered and found to be wounded on the inside of the thigh, and on being removed to the thanna, confessed to having received the wound in this very dacoity. Before the magistrate and this court he pleaded 'not guilty,' and declared the wound on his thigh was caused by an adze, which accidentally cut him while at work stripping bamboos, but the situation of the wound renders the story improbable, and the assistant surgeon who examined it stated his opinion to be that the injury could not have been received in the manner, or from the implement mentioned by the prisoner, but was well accounted for by the prosecutor's statement, as the wound was, to all appearance, a spear wound.

"In my opinion the peculiar position of the wound and its appearance sufficiently identify the prisoner. Nothing can be more natural than the account given by the prosecutor of the way in which he wounded one of the dacoits, nor is it possible to avoid the inference that the wound on the person of the prisoner was so inflicted. Conscious guilt also accounts for the story told by the prisoner's family of his pretended absence from home, when he was found in his house lying disabled by this injury. Had the hurt been really the effect of an accident there could have been no reason for concealing himself.

"As the prosecutor states he struck at those who at the time were actually engaged in assaulting his son, whose life he believed in danger, and the proof adduced appears to me to justify the presumption that the prisoner was one of those who took a leading part in the attack, the object of which cannot be doubted, the prisoner himself also at the time holding the situation of police chowkeedar of a neighbouring village, I sentenced him to the full extent of my authority."

Sentence passed by the lower court.—To be imprisoned for the period of fourteen (14) years, and two (2) years further in lieu of stripes, total sixteen (16) years, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The crime has been fully proved against the prisoner, and I see no reason to interfere in his favor."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

SHEIKH UZMUT

versus

SHEIKH MOTEEOOLLAH (No. 4), SHEIKH MEHER-OOLLAH (No. 5), SHEIKH KHOSAL (No. 6), SHEIKH ROJOO (No. 7), SHEIKH JAN MAHOMED (No. 8), SHEIKH TOREEKOOLLAH (No. 9), SHEIKH MOHO-JUM (No. 10) AND SHEIKH NOAZ (No. 11).

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Case of SHEIKH MOTEEOOLLAH and others.

The conviction of the sessions judge, in a case of culpable homicide, affirmed by the Nizamut Adawlut. The court considered that the sentence might have been made, with reference to the nature of the injuries sustained, more severe.

CRIME CHARGED.—1st count, culpable homicide of Sheikh Shomesh; 2nd count, accomplices in the above crime; and 3rd count, accessaries before and after the fact to the above crime.

CRIME ESTABLISHED.—Accomplices in the culpable homicide of Sheikh Shomesh.

Committing Officer, Mr. R. C. Raikes, magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 9th January 1852.

Remarks by the sessions judge.—"The case arose from a quarrel between prosecutor and prisoner No. 4, about a field, and on the night of the day on which the prosecutor sowed it, the prisoners seized the deceased, as he was coming from a party about 3 A. M., and after severely beating him, dragged him and threw him into the chowkeedar's (witness No. 5's) house, of which he and three others were witnesses. The deceased was seen at daybreak by several of the neighbours, and also named the persons who had attacked him. He was taken to the darogah in a boat, was afterwards taken home, and died six days after the injuries were received, and the evidence of the civil surgeon shows that death was caused by inflammation of the lungs and bowels, which was caused in the first by fracture of five of the ribs, and in the latter by blows on the stomach, and that the body was otherwise healthy. The prisoners denied all along, and in this court alleged many causes of enmity with the deceased, prosecutor, and the witnesses, and named many witnesses, several of whom were their relatives, in support thereof, not one of whom corroborated any part of the defence. The *futwa* of the law officer convicts the prisoners of culpable homicide, in which I concurred."

Sentence passed by the lower court.—Each four (4) years' imprisonment without irons, and a fine of rupees fifty (50), or, in default, to labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"There is no material variance in the statements of the

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eye-witnesses to the assault. They deposed before the darogah, and the magistrate, as they deposed at the trial, to the prisoners taking a part in assaulting the deceased with clubs, and their testimony is corroborated by his declaration taken on oath by the darogah. The deceased was most brutally treated. There was a fracture of five ribs with other injuries, which brought on inflammation of the lungs and bowels, and caused death.

"The defence of the prisoners, pleaded at the trial, and now urged in appeal, is, that the deceased was detected in carrying on an intrigue with the mother-in-law of Gholam Alee, witness, who, assisted by the other witnesses for the prosecution, severely beat him, and then conspired together to bring this false accusation against them. It is utterly unsupported even by the defendants' own relations, and seems devoid of probability when considered with the age of the deceased, who was upwards of sixty.

"I concur in the conviction, and confirm the sentence passed on the prisoners; but I agree with the judge, in charge of the English Department in his remarks on the sessions judge's statements, to wit, that the punishment might, with reference to the circumstances of the case, have been made more severe."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

MUDUNMOHUN GHOSE

versus

GOLUCKCHUNDER CHUTTOPADHEEA, GOUR CHUNG LUTTIAL, DUKEERAM, COURAH, BADUL SHEIKH, NEEAMUT KHAN AND PURRUN SHEIKH.

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Case of GOLUCKCHUNDER CHUTTOPADHEEA and others.

Sentence of fourteen years' imprisonment passed on six prisoners for dacoity, confirmed.

CRIME CHARGED.—1st, dacoity in the prosecutor's house and plunder of property, valued at about rupees 346; 2nd, being accomplices in dacoity; 3rd, being accessaries to dacoity both before and after its perpetration; 4th, prisoners Nos. 1, 2, 4 to 7 are further charged with receiving and possessing portions of the plundered property, knowing them to have been such.

CRIME ESTABLISHED.—Nos. 1, 2, 4, 6 and 7, dacoity; No. 5, being accessary to dacoity both before and after its perpetration, and knowingly receiving stolen property.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. H. T. Raikes, sessions judge of 24-Pergunnahs, on the 15th January 1852.

Remarks by the sessions judge.—"The house of the prosecutor was entered and plundered by a gang of dacoits, on the 27th October last. He was unable to recognize any one, and consequently could afford no clue to the discovery of the robbers.

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"Three days after the robbery, the witness Alee Bux, No. 43, sent to a police *pharee* for assistance, about 8 o'clock in the evening, and on his statement, the police apprehended the prisoners Nos. 2, 3, 5, 10, 13 and 15, after some little resistance on their part in the cutcherry of Issurchunder Mündle at Tally Gunge. The witness Alee Bux then stated to the police that he had gone to the said cutcherry on the 30th or 31st of October, and while ascending the stairs to the upper story, overheard several persons disputing about the shares of some plunder they had lately divided among themselves. On seeing Alee Bux, they separated and left the place, with the exception of Tincowree (No. 3), and Gour Chung (No. 2), and Tincowree on being questioned at once admitted to Alee Bux that he and others had committed a dacoity at Gurinih, and had been disputing about the division of the property, and presented him with a silver chain as a part of the plunder to induce him to keep silence on the subject. The witness Alee Bux did nothing further at that time, but hearing that Tincowree (No. 3), Buddul (No. 5) and Annund (No. 15) were intending to go home, and seeing them on the road in the evening, and suspecting they were going off with their shares of the stolen property, he sent word to the police, who pursued them to the zemindar's cutcherry and captured them, together with three others found on the premises. On the confession of these persons at the thanna and on the information given by Alee Bux, all the other prisoners were apprehended, and two of these were made approvers by the magistrate of the 24-Pergunnahs. The evidence of these approvers, however, is not satisfactory. They stated that the robbery was planned and organized by the prisoner No. 11, who is the zimindar's gomashta, and was perpetrated by the prisoners, who are *latteeuls* of the zemindar. The approvers, however, only deposed to the assembling of the gang and the attack on the house, and allege that as soon as the robbery commenced they ran off and know nothing of what followed. One of them, in cross-examination before the magistrate, admitted having stayed longer but adhered to his first account in this court. There is no direct and independent evidence to support the statements of these accomplices against the prisoners generally, except the Mofussil confessions of all the prisoners, which, however, are only in three instances repeated to the magistrate, but these confessions differ from the approvers' evidence in many particulars, and implicate them to a greater extent than they themselves admit. These confessions cannot, therefore, be regarded as confirmatory of the truth and accuracy of the approvers' statements or of their credibility. I also observe that both these men were offered pardon before the Mofussil inquiry was anything like completed, and it seems to me that, at the time they were admitted as approvers, the

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magistrate could not possibly have known whether he could be able to procure independent proof sufficient to support and establish the depositions of these persons in some material points, without which such evidence must be entirely useless. One of the men did not stand even to his Mofussil confession when brought before the magistrate, and being the first prisoner sent in, it is difficult to understand how the magistrate had satisfied himself that the accused could give trustworthy evidence regarding the robbery. It appears to me that the magistrate should have ascertained that he had proof of some sort of an unimpeachable character, with which to substantiate the evidence of these accomplices, before he admitted them to be approvers, and from want of this precaution, it was quite impossible to test their general credibility, or to measure what weight and effect their evidence was entitled to against the prisoners; setting aside these depositions of the accomplices as not trustworthy, is sufficient proof before me for the conviction of Nos. 1, 2, 4, 5, 6 and 7? The prisoner No. 1 confessed at the thanna, repeated his confession before the magistrate, and gave up some of the stolen property, which he had concealed in the ground under a clump of bamboos; the conviction of this man is inevitable. The prisoner No. 2 confessed in the Mofussil and at the foujdaree. He is one of those who was apprehended at the zemindar's cutcherry, and after confessing his guilt, is stated by witnesses to have pointed out to the police where he had concealed a silver bangle, part of the stolen property, and identified by the prisoner. The proof of this man's guilt seemed clear and indubitable. No. 4 is said to have confessed to the police, and to have stated to them, that before his arrest, he threw some gold and silver ornaments into a tank, which had constituted his share of the plunder, but his mother, when questioned on the subject of this property, produced a small bag containing the property, from a hole in the wall of the prisoner's house, in the presence of witnesses, where she admitted having concealed it, and to have received the property from her son. The fact of the property having been discovered in the son's house and identified by the prosecutor, I regard as circumstantial evidence, corroborative of the prisoner's Mofussil confession as to his actual complicity in the robbery, and personal possession of the stolen property as detailed therein. The prisoner No. 5 confessed at the thanna, having intended to accompany the others, but missed them; and to receiving afterwards from one of them, a part of the stolen property, which he gave up. The fact of his giving up the property, is proved by witnesses. I consider him guilty as an accessary, both before and after the fact, and of knowingly receiving part of the stolen property. The prisoner No. 6 confessed, and admitted having deposited a silver *hookah* bowl with one

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Mootnoollah, who, on being questioned by the police, at once admitted having the bowl, and gave it up to the police. There is no reason for doubting this man's evidence, and it seemed to me thoroughly corroborative of the prisoner's confession on a material point, and therefore entitling it to belief. The prisoner No. 6 confessed at the thanna, and repeated his confession before the magistrate. I saw no reason why it should not be used against him, though he pleaded not guilty at the sessions court."

Sentence passed by the lower court.—Each to be imprisoned for the period of fourteen (14) years, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The confessions of the prisoners are most circumstantial, and bear every semblance of truth. The proof on which the sessions judge has convicted the prisoners, is amply sufficient. I see no reason to interfere with the sentence passed."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

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BHELOO MUNDUL

versus

OOCHUBANUND DAS (No. 8), FUQEER MAHOMED MOOLLAH (No. 9), DOSHUR MUNDUL (No. 10), KISMUT MUNDUL (No. 11), SEETUL KUBRAJ (No. 12), BHADEE MOOLLAH (No. 13) AND SHEETUL CHOWKEEDAR (No. 14).

If several persons be united in a criminal purpose, and any of them do any criminal act beyond the scope of that purpose, such of them as are not privy or assenting to the criminal act done, are not responsible for it.

A person charged with ordering to murder, convicted of assault and promoting and abetting in the seizure of deceased; the evidence as to the actual order to murder not being credited, and murder not being the probable consequence of the direction, assumed to have been given by the said prisoner.

CRIME CHARGED.—No. 8, ordering the commission of the murder of Pear Gain; 2nd, aiding and abetting in the above murder and wounding Keenoo. Nos. 9 to 14; 1st, aiding and abetting in the above murder and wounding Keenoo; 2nd, aiding and abetting in the forcible seizure of Pear Gain and Keenoo.

Committing Officer, Mr. A. Littledale, magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 12th February 1852.

Remarks by the sessions judge.—"The reason for this reference is, that the *futwa* convicts the prisoner No. 8, of giving orders 'to kill' or 'slay,' and on which order, a burkundauz

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cut down the deceased with a sword, who died from the wound, and the same individual wounded the witness Keenoo very severely on the right shoulder, also with the same sword. This conviction amounts to the offence set forth in the 1st count of the charge, and as it is beyond my competence to award punishment, I refer the case as regards all the prisoners for the orders of the superior court.

"The *futwa* contains a very fair epitome of the whole circumstances connected with the outrage committed, and terminating fatally.

"There is, as the court will perceive, a great deal of evidence to the fact of the prosecutor and deceased being seized by the prisoners and others, and when Keenoo (witness No. 1) interfered, he was also seized by the party, and at this time, the prisoner No. 8, gave the orders to kill or slay them without actually naming any one, when according to the witnesses, a burkundauz, by name Meerjan, with his sword, first cut down Keenoo and then the deceased (some of the witnesses, however, Nos. 5 and 6, say, the deceased was first wounded, but I think the statement made by Keenoo may be safely admitted as the correct one). The party then fled, leaving the wounded men (as far as can be made out) on the ground, and on the mohurir of the Surdah Gattee arriving, he took down the deposition of the deceased, and which, as it was evidently a 'dying declaration', I examined the witnesses before whom it was made, and it being fully attested, I have had it filed on the record.

"Now these are the facts, but the motives for the commission of such an outrage in open day, are not so clear, but from the proceedings in this and two other cases, it would appear, that Bhyrub Indur Narain Roy, one of the zemindars of Potea, had brought a charge or complaint against the dewan, by name Kallypershad Sein, for breach of trust, under Act XIII. of 1850. In that case, the prisoner No. 8, gave evidence for the zemindar. After this, an Act IV. case was instituted in the magistrate's court, between the said Bhyrub Indur Narain and the dewan's wife, about a village which the latter claimed as his *putnee*, given to him for a considerable sum in the name of his wife. Bhyrub Indur Narain, however, denies this *in toto*, alleging it was a *benamee* transaction, and his wife put in a claim, that she had got a *durputnee* of the same village. However, no proof was filed by the latter, and on the evidence of the witnesses for the dewan's wife, the case was decided on the same day as this commitment, in favor of the dewan. In that case, on the 5th of December, and before the date of this outrage, the prosecutor, as well as Pear Gain the deceased, were examined and gave evidence in support of the ex-dewan's claim, and it is asserted that, on account of their having given such evi-

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dence, the orders were issued for their being seized, and to the seizure being effected by the prisoners and others. This of itself was a most illegal and unlawful arrest by the party concerned, and as, in the prosecution of such unlawful act, one of the parties arrested was killed, the offence of all the parties concerned, or present, aiding and abetting, would amount to murder in the English law, but as they have been tried under the Mahomedan law, and all but No. 8 are Mahomedans, I would let the prisoners from Nos. 9 to 14, have the benefit of their own law, for they, at any rate, had no hand in cutting down the deceased and the witness Keenoo, and probably, when engaged to arrest the former had no idea that violence would be used against him or any one else.

"With regard to No. 8, there can be little doubt he gave orders 'to kill them' (*i. e.* the parties whom they had arrested) if they would not go along with the party, or 'do as they were 'bid.' It is impossible to say, whether he intended that the order should be literally obeyed by the burkundauz who drew his sword on the deceased and witness Keenoo, but as he gave the order, and it was obeyed most effectually by the burkundauz, he must stand the consequences of his most injudicious and hasty proceedings. In the absence of *malice prepense* or any ill-feeling towards the deceased, I think a sentence of transportation for life (under the *futwa* of *akoobut*) would be appropriate. The prisoner set up an *alibi*, and his witnesses supported it, but as nearly half of them could not speak to the date on which they were examined in this court, although they could refer most distinctly to what occurred nearly two months before, there cannot be a doubt they were tutored what to say.

"With regard to the prisoners from No. 9 to 14, the defences set up by them are most lame and impotent, as all reside at the same village, or very near. It is not, however, alleged, that they had any enmity, or animosity towards the deceased, and as they all acted under orders of their superior, and were *mere tools*, I beg leave to suggest, that they be sentenced to two (2) years' imprisonment with labor commutable on the payment of a fine of rupees fifty (50) each. Their offence, under the *futwa* is, being concerned in seizing and carrying off Pear Gaiu deceased, and which is the 2nd count of the charge against them, and there can be no doubt of their guilt.

"I have, with the record of this court and the magistrate's proceeding, forwarded the proceedings in the Act XIII. case, should the court wish to refer to it, as the prisoner No. 8, in his defence, adverts to the deposition given by him in that case, and which was read, and as the present outrage clearly arose out of the Act IV. case, decided on the same day that the commitment was made, I have forwarded the case with the petition

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of appeal against the magistrate's order, should the court wish to peruse the papers.

"In conclusion I regret to remark, that no *sooruthal* or inquest was held on the body *after* death, which was a great omission, and the native doctor (who examined the body when sent into the station) was reported to be unable to attend from illness. But of the deceased's death there cannot be a doubt, neither can there be a doubt that his death was caused by the sword wound inflicted on his neck, as deposed to by the witnesses, who saw the wound when the deceased was still alive, and made his dying declaration. I trust, therefore, that the trial will not be found incomplete, though the document called *sooruthal lash* has been omitted."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"This case is referred in consequence of one prisoner having been found guilty on a charge of a fact which amounts to wilful murder. The charge, it should be observed, is faulty in form, inasmuch as it omits to set forth the class of homicide to which the offence belongs. This defect, however, is not such as to vitiate the trial.

"The letter referring an important trial, especially one involving nice questions of fact and of law, such as the present, should have been more circumstantial and complete than that submitted. It is not sufficient to refer, as has been done, to the *futwa* for a narrative of the circumstances. Moreover the *futwa* does not contain all that is required in this respect.

"The first thing is to determine as accurately as possible, from evidence, which is in some essential particulars conflicting, what are the facts of the case, and then to consider the degree of guilt involved in those facts.

"It appears that a zemindar Bhyrub Indur Narain, had a feud with a former dewan of his, and that in a case which occurred between them, the deceased Pear Gain and others gave evidence adverse to the Raja. On the day of the present occurrence, the prisoner Oochubanund Das, Meerjan (Meeajan?) and some other up-country burkundauzes, accompanied by several *ryots* in the Raja's interest, went and seized the deceased, and a relation of his, Bheloo Mundul, the prosecutor in this case. They were carrying them off towards Pootea, which, it is presumed, is the residence of the zemindar. On the road, the witness Keenoo interfered and they seized him also. The party leaving Oochubanund and some of the attendant *ryots* on the west bank of the Narud, crossed over, and on the opposite side, the captives, observing some servants of an indigo factory, took courage and declared that they would go no further. Their guards called to Oochubanund, telling him of this, when he and his party made

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use of some expression, respecting the exact purport of which there is much discrepancy, and almost immediately afterwards, one of the burkundauzes, Meerjan, wounded the witness Keenoo and the deceased with a sword, the last so badly, that he shortly afterwards expired. No formal *sooruthal* or *post mortem* examination of the body was held, but one witness describes with much precision the nature and extent of the wound, so as to leave no doubt as to its having caused the death of the deceased.

"It is proved, that the prisoner Oochub was of the party when they seized the deceased and Bheloo, and also when they seized Keenoo. The law officer and sessions judge appear to be satisfied, that the order given by Oochub when referred to, from the other side of the Narud, was to kill the captives. The former expressly states, however, that he believes it was not with an intention of anything further than intimidation, and it is inferrible from the letter of the judge, that he does not think the intention was to cause murder.

"It is essential to weigh carefully the evidence on this important point. There are several versions of the expression which was used. The deceased to the darogah, and Bheloo prosecutor in the sessions court say, that the words were '*khoon koro*,' *i. e.*, 'murder them.' Keenoo, Mungul, Dilbur, Meeroo, Jeeroo and Fuqeer, witnesses, that they were '*mata katya lo*,' 'cut their heads off.' However many of these have not been consistent at each stage of the inquiry, in giving the above as the actual words used. For instance, Bheloo to the darogah said, that the expression was '*salah ra je rupe jay loeya jao*.'—'Take 'the fellows any how.' To the magistrate he said, that it was '*maro*,' beat them.

"Again, Keenoo to the darogah said, that the words were '*khoon koro*,' and to the magistrate, that the expression was '*maro*.'

"On the other hand, three witnesses, *i. e.*, Ruzzy Mundul, Khejmut and Khoij, depose in the sessions court, that the expression was '*jahate jay taha koriya loiya jao*'—'Do 'whatever will make them go.'

"The account of the transaction, which bears upon it the greatest semblance of truth, is that of the witness Ruzzy Mundul. He says: One of the party (*i. e.*, the burkundauzes) said to Oochub. 'They won't go on.' He said, '*jahate jay taha 'koriya loiya jao*'—(Do whatever will make them go.) Keenoo (one of the captives) at this time gave Meerjan, who had a sword, a push, and attempted to run off, Meerjan cut him on the back. Pear Gain (the deceased) seized Meerjan and cried murder (*'manosh khoon korileh,'*) on which Meerjan cut him down from head to shoulder.

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"I adopt this as the most likely version of the affair. The expression given in this deposition, is almost word for word the same as that given in Bheloo's deposition to the darogah.

"In this view, the prisoner cannot be convicted of the precise charge laid, *viz.*, giving an order to murder. The next question to be determined is, whether the act done and means used are substantially the same, or the probable consequence of that actually encouraged; I think they are not. To cut a person down with a sword is quite inconsistent with making him go on.

"I now come to the consideration of the point, whether Oochub and the other prisoners are guilty as aiders and abettors in the murder, from the circumstance of their presence and being united in a criminal purpose.

"The rule of English law is not exactly as the sessions judge supposes.* It provides that, if several persons be united in a criminal purpose, and any of them shall do any criminal act beyond the scope of such design, such of them as are not privy or assenting to the criminal act done, shall not be responsible for it. This appears to be a very just rule, and has been adopted by the English† law commissioners in their proposed criminal code.

"The purpose for which the prisoners were united, was to carry the deceased and others to Pootea. The murder of one of the party seized, was an incident not within the scope of that design, and was so sudden, that the prisoners had not time, if they had been inclined even, to interfere to prevent it. The acquittal of the prisoners Nos. 9 to 14 of the second charge, and the finding them guilty only of aiding and abetting in the forcible seizure of Pear Gain is quite consistent with justice.

"From the foregoing remarks, it will be seen, that I am of opinion that Oochubanund cannot justly be made answerable for the murder of Pear Gain, which, though it followed upon the criminal assault and seizure, in which that prisoner was engaged as a principal, was not done with his assent or privity, and was not within the scope of the design with which the assault was committed. But I convict the prisoner Oochubanund Das of being a promoter and principal in an aggravated assault upon, and the forcible seizure of, Pear Gain and Keenoo, and I convict the other prisoners Nos. 9 to 14, of aiding and abetting in that offence. The offence, although technically only an assault, was a most serious one; it was an attempt on the part of the prisoners to place their master above the law; to baffle the administration of justice by the intimidation of witnesses. It is necessary to mark by a severe sentence, that such lawlessness will not be tolerared. I therefore sentence Oochubanund Das

* See Russell on Crime, pages 29 and 30.

† Chapter 2, Section IV. Article 16, Page 7.

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to five (5) years' imprisonment and to pay a fine of rupees five hundred (500), commutable on non-payment to imprisonment for a further period of two (2) years. The sentence proposed by the sessions judge for the other prisoners, *viz.*, two (2) years' imprisonment and a fine of rupees fifty (50) commutable on non-payment within a fortnight to labor, is approved and confirmed. The judge would have acted more consistently with the law (Clause 2, Section VI., Regulation LIII. of 1803, and Clause 3, Section IV., Regulation IX. of 1831), if he had passed sentence on them himself. One Meerjan has, it is observed, been acquitted by the magistrate, because he was not recognized as the culprit by the witnesses, but it is not clear whether any further attempt was made to discover and apprehend the real Meerjan and other offenders; nor is it apparent, whether any inquiry as to the guilt of Bhyrub Indur Narain in sending an armed party to seize persons on account of their giving evidence adverse to him, was held. It is obviously proper, that such measures should be adopted. A copy of the sessions judge's letter and these remarks will therefore be sent to the superintendent of police, for his consideration and orders."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

1852. March 25. Case of Patoo Pullee and others.

GOVERNMENT

versus

PATOO PULLEE (No. 18), MAHYNATH NAPITH (No. 19), TUCKKY NUSHO (No. 20), MOHOBOOLLAH MUNDUL (No. 23), GOLUCKNATH ROY (No. 21), NABANO MUNDUL (No. 25) AND JUNJALOO CHOWKEEDAR (No. 26.)

The deceased had long been intriguing with the wife of one of the prisoners, and was besides an oppressive creditor of all the other prisoners, but one.

A single prisoner released, others convicted and sentenced as shown.

CRIME CHARGED.—Prisoners Nos. 18, 19, 20, 23 and 21, wilful murder of Dinno Nath Dass; No. 25, 1st count, wilful murder of Dinno Nath Dass; 2nd count, accessary after the fact, by not reporting the murder, as being mundul of the village he was bound to do, and No. 26, accessary after the fact, by giving a false report at the thanna.

Committing Officer, Mr. E. S. Pearson, magistrate of Dinagepore.

Tried before Mr. James Grant, sessions judge of Dinagepore, on the 9th February 1852.

Remarks by the sessions judge.—"An adulterous intercourse had existed, for some three years, between the deceased and the wife of the prisoner Patoo Pullee, No. 18. At the commencement, a charge of rape was brought against the deceased, but subsequently, Patoo, No. 18, appears not to have objected to

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the intercourse, and the wife of his elder brother lived in the house of the deceased as his concubine. The principal instigator to the murder appears to have been the prisoner Golucknath Roy, No. 24, a first cousin of the deceased. The loss of caste by the prisoner's sister, when the deceased might have prevented it, was the cause of enmity, increased by subsequent money and family matters. With the exception of Junjaloo Chowkeedar, No. 26, all the other prisoners were the deceased's debtors, and so also were most of the witnesses in the case. From the Mofussil confessions, which have every appearance of being genuine, it is clear that the murder was committed to get rid of an oppressive creditor. An arrangement was made a short time before, in the house of the prisoner Golucknath Roy No. 24, that when the deceased came to visit Patoo's, No. 18, wife, he was to be murdered with the aid of his servants Khoolyea, No. 21, and Pirzaroo, No. 22, who generally accompanied him when he went from home. Accordingly, on the night of the 3rd December, some of the party concealed themselves on each side of the house, Patoo, No. 18, being inside, and as the deceased entered, he was seized, thrown down and despatched, by simultaneous thumping, compressing and throttling, immediately after which he was taken to his own residence, close at hand, and placed along side the outer wall, the chopper above which was set on fire. The intention, no doubt, was to burn the house, but fortunately the outer doors were fastened, and the fire, having been observed by the servants inside, was extinguished. The body was burnt in front, but not on the back, which is perfectly compatible with the Mofussil confessions, and the evidence of the civil surgeon. Before the magistrate the following prisoners confessed :—Patoo, No. 18, to the murder as in the Mofussil. Mahynath, No. 19, to having assisted in removing the body and to having received a gold ring and two rupees, Tuckky, No. 20, and Nabano, No. 25, to having been present at the removal of the body. The prisoner Golucknath Roy, No. 24, who in the Mofussil had confessed to having agreed to the murder and to having aided in the removal of the body, pleaded 'not guilty', and the improbability, he being first cousin to the deceased. Mohoboollah, No. 23, also, who had confessed in the Mofussil and produced the '*lota*' of the deceased, pleaded 'not guilty,' as well as Khoolyea, No. 21, and Pirzaroo, No. 22, who did so all along. Patoo's, No. 18, first confession in the foujdaree, tallying with his Mofussil one, was taken on the 10th of December, and on the 8th of January he volunteered a second, in which he declared that he, single-handed, had killed the deceased in the act of adultery with his wife, and thrown the body by the wall, and that the prosecutor 'Ashina,' witness No. 3, had put him up to naming the others as accomplices. On this the prisoners, with the exception of Patoo, No. 18, and Golucknath, No. 24, were

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released, but were again apprehended after the magistrate had visited the spot and satisfied himself that Patoo, No. 18, could not alone have removed the body, and that the murder was attributable to the prisoners' debts to the deceased, as stated by the widow. In the foujdaree, Patoo's, No. 18, mother and wife gave distinct evidence against him and his accomplices, but unfortunately before me their evidence was in support of his second version of the affair. This reduces the proof to the confessions and the production of the deceased's keys, gold ring, *lota*, &c., including a coin marked in the centre and known as his '*hazareenishan* rupee.' The *futwa* of the law officer convicts Patoo Pullee, No. 18, as an accomplice and Mahynath, No. 19, Tuckky, No. 20, Mohoboollah, No. 23, Golucknath Roy, No. 24, Nabano, No. 25, and Junjaloo Chowkeedar, No. 26, as accessaries after the fact. I concur except in respect to the prisoner Golucknath Roy, No. 24, who pleaded 'not guilty' both in the foujdaree and before me, and against whom there now remains only his Mofussil confession, the women having denied the truth of their foujdaree evidence. Against Patoo, No. 18, there is his Mofussil confession, his foujdaree confession and the production of the keys, &c. of the deceased. Against Mahynath, No. 19, his Mofussil confession, his foujdaree confession, and the production of the gold ring and rupees. Against Tuckky, No. 20, and Nabano, No. 25, their Mofussil and foujdaree confessions, with the false report as to the snake-bite by the latter. Against Mohoboollah, No. 23, his Mofussil confession and the production of the *lota*, which was proved to have been in the hand of the deceased immediately before the murder, and against Junjaloo Chowkeedar, No. 26, the false report of the man's death in respect to which he pleaded orders and intimidation. With reference to the wrong done to the prisoner Patoo Pullee, No. 18, by the deceased, and there not being sufficient legal proof to convict any of the other prisoners as accomplices, I recommend that he, No. 18, Mahynath, No. 19, Tuckky, No. 20, Mohoboollah, No. 23, and Nabano, No. 25, be sentenced to imprisonment for life in transportation beyond seas, and that Junjaloo Chowkeedar, No. 26, be sentenced to five (5) years' imprisonment with irons and hard labor."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"Nine prisoners were committed to the sessions in this case.

"Prisoners Nos. 21 and 22 were released by the sessions judge, who has recommended a sentence of imprisonment in transportation upon the prisoners Nos. 18, 19, 20, 23 and 25, and would release prisoner No. 24. Prisoner No. 26, being a chowkeedar, it is proposed to sentence him to five (5) years' imprisonment with irons and labor.

"The two principal witnesses, Pholiporee, mother of prisoner No. 18, and Toormuttee, his wife, who before the magistrate

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deposed to having seen all the prisoners beating the deceased, Dinno Nath Dass, revoked what they had said, and before the sessions judge spoke of the prisoner No. 18 *only* as having killed the deceased, who had come into his house to visit his wife. Prisoner No. 18, in his confessions before the police and in that before the magistrate of the *10th December*, accused all the prisoners of having been accomplices with him. His answer was again taken by the magistrate on the 8th of January, why, is not stated; he then said he alone killed the deceased with a single blow of a bamboo, having caught him in the room in which he and his wife were sleeping in the act of dishonoring her. On procuring a light, he ascertained that deceased was the individual who had intruded. Prisoners Nos. 19, 20, 23 and 25, in the Mofussil, confessed that they were parties to the deed. Prisoner No. 24, it is alleged, admitted that the others had planned to kill the deceased on account of his oppressive conduct, and that on the 18th Aghun, two of them came and told him they had killed the deceased, upon which the prisoner went and saw the corpse. Prisoner No. 26 does not appear to have been examined in the magistrate's court, but prisoners Nos. 19, 20 and 25 in that court admitted they saw the corpse. Prisoner No. 23 made no confession.

" It is fully proved that the deceased Dinno Nath met with his death on the 18th Aghun, whether he was beaten to death and then burned, or was killed by being burned, is not clearly established. The medical officer is of opinion that he was burned to death, but if there be any truth in the evidence of the two females, eye-witnesses, deceased was burned after he was killed; such too is the confession made by the defendant Patoo, No. 18, in his first examination before the magistrate, on the 10th December. That confession is verified, as is the prisoner's subsequent one of the 8th of January. There is, however, a wide difference between these. By the first confession, the prisoner is an accomplice in the death of Dinno Nath, by whom there can be no doubt that he was much wronged, for the evidence throughout sufficiently proves that the deceased had been carrying on an adulterous intercourse with his wife. But the latter confession, if it contains the truth, exonerates the prisoner from all blame. He therein states he knocked down an unknown man, who had stealthily entered the house and was dishonoring his wife by his side.

" In order to determine the extent of the prisoner's guilt, it must first be determined which of these two confessions is to be relied on. I am disposed to believe that the first confession contains the true statement of the facts. It was made in the Mofussil and deliberately repeated before the magistrate; it is

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also confirmed by other circumstances. These two female eye-witnesses have repudiated their depositions in the foujdaree court in their evidence before the sessions judge, but irrespective of that evidence, there is in the prisoner Patoo's, (No. 18), verified confession of the 10th December, and in the evidence of other witnesses on the record, enough to establish that the deceased had long been intriguing with his wife. There was, however, another cause of enmity, which had made the deceased obnoxious to all the prisoners except No. 26, Junjaloo. They were all indebted to the deceased, and some of them have alleged that though they had repaid the loans they had received from deceased, he still held their bonds for sums considerably larger than they had ever borrowed from him. The prisoners are of different persuasions and of different castes, and the intrigues of the deceased with Toormuttee, the wife of the prisoner No. 18, Pattoo, could hardly have been the cause of the general hatred in which the prisoner was held.

"In the Mofussil confessions of all the prisoners, reference is made to an improper intimacy which had for a long time existed between the deceased and Toormuttee. Why this should have been a subject of any offence to the prisoners generally is not shown, nor can it be accounted for? On the other hand, the position in which the deceased stood to them in regard to their debts was a common cause of enmity, and it is highly probable that the real cause of the murder was the oppressive conduct of the deceased in his monetary transactions with them.

"There can be no doubt that the deceased was murdered on the night of the 18th Aghun in the house of prisoner No. 18, and for the reasons above given, I am led to the conclusion that he was at least an accomplice in the deed. His second story, it appears to me, has been got up with the view to the justification of his own act, and in order to the exculpation of the others. I cannot find that the assault on the deceased was made on the impulse of the moment. It was not so much in vindication of his own honor, for he must have been aware of his wife's conduct for some time previous, as to get rid of a troublesome creditor, that he and the others attacked and killed the deceased. The eye-witnesses having, however, repudiated their evidence, the principal legal proof against the prisoner fails. No reason is assigned by the magistrate for having taken a second answer from Patoo on the 8th of January. His story on that occasion reduces the extent of his guilt; indeed if it were true it would exonerate him altogether. But I place no reliance on that confession. His previous one, of the 10th December, is duly attested, and the circumstances of the case strongly confirm its truth. I therefore convict him on his confessions, before the police and

before the magistrate on the 10th December, of having been an accomplice in the murder of the deceased Dinno Nath Dass, and sentence him to imprisonment for life in transportation.

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Case of PATOO PULLEE and others.

"The prisoners Nos. 19, 20, 23 and 25 confessed to being present and taking a part in the murder before the police. Before the magistrate No. 19 confessed to taking the corpse and throwing it down near the house of deceased. Some property, a ring, which belonged to him, was found on the prisoner, this makes him an accessary after the fact.

"No. 20 in the foujdaree admitted he saw the corpse, knew that the deceased had been killed, and remained silent on the subject at the request of the prisoners, which amounts to the same offence. No. 23 pleaded 'not guilty' before the magistrate, a *lotah*, however, the property of the deceased, was found in his possession. No. 24 denied the charge throughout. The law officer would convict, the sessions judge acquit, this prisoner. I concur with the sessions judge in thinking the evidence is not legally sufficient for a conviction. No. 25, before the magistrate, went no further than to say that he saw the corpse of the deceased who had been murdered, upon which he told prisoner No. 18 to give information to the prisoner No. 24. No. 25 is a chowkeedar; he was told, he states, by No. 26, and by the wife of deceased, to report his death in consequence of a snake-bite, but has failed to establish his defence.

"Under the above circumstances, I convict the prisoner No. 18, as an accomplice, and sentence him to imprisonment for life in transportation. The prisoners Nos. 19, 20, 23 and 25 are guilty of being accessaries after the fact. I sentence them to seven (7) years' imprisonment with irons and labor. Prisoner No. 26, the chowkeedar, whose duty it was to make a true and faithful report, gave such information at the thanna as was calculated to mislead and to conceal the real facts of the case. He went to the spot, and saw the corpse of the deceased after it had been burned, with a view to prevent the discovery of the actual cause of death. His offence, though it amounts to privity only after the fact, is, with reference to his position and his duty, a grave one. I therefore confirm the sentence proposed of (5) five years' imprisonment with irons and labor passed upon him by the sessions judge.

"Prisoner No. 24 is acquitted and released."

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

GOVERNMENT

versus

JUGMOHUN SINGH (No. 8), AND DILJORE SINGH (No. 9).

1852. March 25.

Case of JUGMOHUN SINGH and another.

Convictions and sentences of imprisonment for five years, with labor and irons, passed by the sessions court on two prisoners, sepoys of the local guard, for perjury, in order to screen a party accused, upheld.

CRIME CHARGED.—Prisoner No. 8, Jugmohun Singh, with perjury, in having, on the 11th September 1851, deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Shahabad, that he and prisoner No. 9 were both on duty at the jail guard in the month of Jeyt at the same time, and that they both saw Ramsurn Singh on one and the same date, whereas, from statement of Gooftar Singh, soobadar, and Lall Singh, pay havildar, it appears that they, the prisoners, were not on guard at the jail on the *same* date, since prisoner No. 8 was on duty from 1st to 15th May at the collectorate guard, and 16th to 31st May at the jail guard, so the above statement of the prisoner is false, and was intentionally and deliberately made on a point material to the issue of the case. Prisoner No. 9 (Diljore Singh), with perjury, in having, on the 10th and 11th September 1851, deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Shahabad, that on the 7th Jeyt, corresponding with 22nd May 1851, when he was on duty at the jail guard, the first watch, Ramsurn Singh, a prisoner charged with affray, came to the jail guard and stated that he was sick and had come to pay his rent, and that he remained there till the 23rd May 1851, and went away on the 24th May 1851, and he, the prisoners Nos. 9 and 8, both were on duty at the jail guard at the *same* date and time, and that he, as well as prisoner No. 8, saw the above Ramsurn at the same time, whereas from the statement of Gooftar Singh, soobadar, and Lall Singh, pay havildar, it appears that the prisoner No. 9 was not on duty at the jail guard on the 22nd, 23rd and 24th May 1851, and that the prisoners Nos. 9 and 8 were not both on duty at the same date, that is, prisoner No. 9 was on duty at the jail guard from 1st to 15th May 1851, and from 16th to 31st May at the collectorate guard, so the above statement of prisoner No. 9 is false, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

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Case of JUGMOHUN SINGH and another.

Tried by Mr. W. Tayler, sessions judge of Shahabad, on the 24th November 1851.

Remarks by the sessions judge.—" The commitment of these two prisoners has been referred to in case No. 5 of the Statement of September last.

" The prisoners are both sepoys of the local guard, and were brought forward by prisoner No. 5, in the case quoted to establish an *alibi*. Prisoner No. 9 swore that Jugmohun Singh aud Diljore Singh had come to the guard-house at the jail, where he was on guard, on the 22nd of May (the date of the affray) and remained there until the 24th.

" His demeanour, while giving evidence, attracted my attention, and connecting this with the positive testimony of the witnesses for the prosecution, which clearly convicted the prisoner Ramsurn of taking a principal part in the affray, and with the perjured evidence regarding this same prisoner of another witness (also committed,) led me to make a reference to the magistrate to ascertain the date on which the prisoner was posted at the jail.

" The evidence of the commanding officer and the pay havildar clearly establishes the fact that he was on guard at the jail from the 1st to the 15th May 1851, and that from the 16th to 31st idem he was on guard at the collector's office, a mile off.

" The prisoner No. 8 corroborated the statement of his comrade, and being specially asked whether Diljore Singh was there and on guard at the time, affirmed that he was.

" This prisoner it appears was on guard during the period specified, but his evidence is clearly as false as the others. Not only is it shown to be so by the fact of the case itself, the evidence of which proves that Ramsurn Singh could *not* have been at the jail on the day mentioned, but also by the fact established beyond all doubt in this case that the prisoner No. 9 was *not* on guard at the j'il after the 15th May.

" This appears to me, therefore, a case of wilful and deliberate perjury. The evidence of the commanding officer and pay havildar is unexceptionable, and the fact on which the charge rests is placed beyond all possibility of doubt by the defence.

" If the prisoner Diljore had been on guard on the date asserted, he could have at once adduced thirty-eight comrades to attest the fact from their personal knowledge.

" Instead of this, the prisoner produced some papers, written in the *Hindee* character, without attestation or signature, said to be written by a sepoy, and purporting to contain the names of the sepoys on guard at the collectorate, and in which the name of Diljore Singh is said to be mentioned.

" The alleged writer of these papers says, he wrote them for his own satisfaction according to some old order of the collector.

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"The whole story appears absurd, and the papers utterly without value.

"The nature of the defence is in itself a condemnation of the prisoners.

"The *futwa* convicts both prisoners of the charge, and declares them liable to *tazeer*.

"I sentence them to five (5) years' imprisonment with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"The court do not find ground for interference with the judgment and sentence of the sessions court in this case. There is no good reason for distrusting the statements of the soobadar and kot-havildar, which prove that No. 9, Diljore Singh, was not on the jail guard on the date at which he professes to have seen Ramsurn Singh at that guard, and the mere unauthenticated list, said to have been prepared by the witness Hurragout Pande, of the sepoys of the police battalion who were on duty at the guard at the collector's office during the month of May, cannot be accepted, unsupported by other testimony which was readily available to them, as any satisfactory evidence in favor of the prisoners. The circumstance that Ramsurn Singh has been subsequently acquitted of the crime with which he was charged, by order of this court, cannot affect the guilt of the prisoners in giving false depositions so as to screen him.

"The appeal is, therefore, rejected."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

RADHIKAPERSAUD BANERJEA, ON THE PART OF RAMNARAIN MOOKERJEA

versus

ISSUR TEWAR.

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Case of ISSUR TEWAR.

Sentence against a prisoner of seven years' imprisonment, for theft of jewellery, &c., the property of his master, confirmed.

CRIME CHARGED.—1st count, committing a theft and stealing property to the amount of rupees 1,018-14-10, on the 2nd January 1852, being a servant of the owner of the property; 2nd count, with receiving a part of the stolen property in the above theft, knowing it to be such; 3rd count, with being accessary before and after the fact in the above theft.

CRIME ESTABLISHED.—Being accomplice in stealing from his master property valued at rupees 1,018-14-10.

Committing Officer, Mr. S. Wauchope, magistrate of Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 23rd January 1852.

Remarks by the additional sessions judge.—"The 19th of Poos was the day of the *srādh* of the prosecutor's mother, who lives with his relation Ramnarain Mookerjea. On that day a quantity of jewellery, belonging to the family, was put away in a box in the third story of the house, and the next day it was missed. The prisoner, who had lately been engaged as a servant, at one and a half rupee by month, was suspected and apprehended, and confessed before the darogah that he was an accomplice of one Chunder Roy, who is a Brahmin, living in the village, in committing the theft. He also showed where a great part of the jewellery, valued at rupees nine hundred and eighty-one (981), was concealed in a tank, about one-eighth of a coss from the prosecutor's house. Before the magistrate he stated that Chunder Roy had talked to him about the jewels, and that he had watched at the place during the night and had told of the crime the next day. In his defence the prisoner said that he saw Chunder Roy go off with the property and hide it, and that he told the family of the theft, and had been directed by the prosecutor to watch the place where the property was hid. He called two witnesses who could say nothing in his defence."

Sentence passed by the lower court.—To be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner in his appeal repeats the substance of his defence on trial before the sessions court. The record shows that it is untrue; for it was not until some hours after his apprehension that he pointed out the place where the property was hid. The proof fully supports the conviction; and the appeal is therefore rejected."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

PITUMBER MOOKAPADYA (No. 1 APPELLANT), ARMAN CHOWKEEDAR (No. 2) AND RAMDHUN KURMOKAR (No. 3).

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Case of PETUMBER MOOKAPADYA (appellant) and others.

Sentence of nine years' imprisonment for highway-robbery, confirmed.

CRIME CHARGED.—No. 1, 1st count, highway-robbery, in which gold, weighing 51 Sicca weight, 6 annas, valued at rupees 770-8-0, was plundered from the prosecutor; and 2nd count, receiving and possessing portions of the above stolen property knowing it to have been such. No. 2, being an accessary after the fact to the crime above-mentioned, inasmuch as he did, on or about the 9th September last, in or near the village of Sonadanga Lushkurpore, in the jurisdiction of thanna Mowhazaree, while holding the office of police chowkeedar, receive the sum of rupees 20, from the prisoner No. 3, as a bribe for the concealment of the aforesaid crime, and did, in fulfilment of the condition on which he received such bribe, make a false report to his superiors of the occurrences connected with the crime, thereby aiding and comforting to the best of his ability, the prisoner No. 1; and No. 3, being an accessary after the fact, inasmuch as he did, at the time and place mentioned in the 3rd charge, aid and assist the prisoner No. 1, *viz.*, administering a bribe of rupees 20 to prisoner No. 2, for the purpose of inducing him to conceal the crime of the prisoner No. 1, and persuading and advising him to make a false report of the case to the officers of the police thanna of Mowhazaree.

CRIME ESTABLISHED.—No. 1, highway-robbery. No. 2, being accessary after the fact in a case of highway-robbery, inasmuch as he, being a chowkeedar, endeavored to conceal the crime, by making a false report for a bribe of rupees 19, and No. 3, being accessary after the fact in a case of highway-robbery, inasmuch as he gave a bribe of rupees 19 to Arman Chowkeedar and induced him to conceal the crime.

Committing Officer, Mr. E. Jackson, officiating magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 23rd December 1851.

Remarks by the additional sessions judge.—" On the 10th of September last, a man called Dhurrum Das was going from Calcutta to the house of his master Ramdhun, prisoner No. 3, at Batsala, taking with him three ingots of gold. When he arrived near the house of Abdool Mistree, about a mile from his master's, he was attacked by two men, one of whom held him, and

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the other robbed him of the gold. He called for assistance, and ran after one man, *viz*., the prisoner No. 1, who was apprehended and an ingot of gold, worth rupees five hundred and twenty-eight and twelve annas (528-12), was recovered from him. The man was given in charge to the chowkeedar (prisoner No. 2), who did not take him direct to the thanna, but waited until the morning; and in the meantime Ramdhun (No. 3), having heard of the affair, came to the chowkeedar and gave him rupees nineteen or twenty, to make a report at the thanna favorable to the thief, who had been his servant and is a Brahmin. The chowkeedar did report in his favor, but the report was not committed to writing, and when he had made it he was let go to his home. Dhurrum Das also would have concealed the crime of Pitumber, but the darogah had his suspicions, owing to the dirty and tattered state in which Pitumber was in, and on putting questions, the truth was made manifest, and he made a true statement of the circumstances on oath. The capture of Pitumber, with the ingot of gold on him, is proved by the evidence of several witnesses; besides which he confessed before the officiating magistrate that he was one of a party who attacked Dhurrum Das and robbed him. The evidence against the prisoners Nos. 2 and 3 is as follows:--Witnesses Nos. 14 and 16 stated that rupees twenty were proposed to be given by Ramdhun to the chowkeedar. Dhurrum Das said that rupees twenty were given to him as a present, rupees seventeen were given up by him from his house, and before the magistrate he acknowledged that he received rupees nineteen, but gave one rupee to each of two burkundauzes. There is also the circumstance of twenty-three brass medals, to the memory of the late Duke of York, having been found on the prisoner Pitumber, which the chowkeedar appropriated to himself. No party will claim these as they are suspected to be forged gold mohurs. Both prisoners in their defence allowed that the money was paid but only as a present. The only circumstances in favor of Arman is, that the parties were willing to compromise the case, but as it is forbidden by Regulation XXII. of 1793 to darogahs to allow parties to do so, the chowkeedar ought not to have allowed it and particularly for a bribe. In favor of Ramdhun, it may be said that he was afraid of losing his ingot of gold, or at any rate of being deprived of the use of it until the case might be disposed of. He was the only injured person, and Petumber had received much ill-usage when he was apprehended. In awarding his punishment, I took into consideration his heavy loss from the robbery, and the confiscation of the money he had given to the chowkeedar."

Sentence passed by the lower court.—No. 1, nine (9) years' imprisonment including two additional years, awarded in lieu

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of corporal punishment with labor and irons. No. 2, two (2) years' imprisonment with labor, and No. 3, two (2) months' imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner Petumber Mookerjeea has now appealed; but has urged nothing on which an order for the reversal of his conviction, founded as it is on the strongest proof and his own confessions, can be pronounced.—The appeal is rejected."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

MUSST. OOLFUTH

versus

KERAMUT ALEE.

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Case of KERAMUT ALEE.

The conviction of the prisoner upon a charge of wounding with intent to murder upheld. The court remarked on the inadequacy of the punishment awarded.

CRIME CHARGED.—Wounding with intent to murder the prosecutrix.

CRIME ESTABLISHED.—Wounding with intent to murder Musst. Oolfuth.

Committing Officer, Mr. G. G. Balfour, magistrate of Monghyr.

Tried before Mr. F. Lowth, officiating sessions judge of Bhaugulpore, on the 19th January 1852.

Remarks by the officiating sessions judge.—"The prisoner, native of the Nepal territory, pleaded 'not guilty' to the charge preferred against him under the following circumstances:—The prosecutrix, a prostitute, residing in the town of Monghyr, had been in the habit of receiving visits from the prisoner for a few days previous to the occurrence, and on the night in question, 21st September 1851, or 11th Assin 1259 *Fuslee*, was sleeping with him. Between three and four in the morning, the prisoner awoke and asked the hour, and on being told it was still night, apparently went to sleep again, shortly after, however, the prosecutrix felt something prick her back, and thinking it might be a cat, jumped up, when the prisoner immediately seized her by the hands and desired her to remain quiet; she, however, called to her sister Sahibjaun, witness No. 7, to come and see what was the matter, when the prisoner stabbed her in the left side, just below her breast with a knife, produced in court.

"The prosecutrix then released herself from the prisoner's grasp, and rushing out of the door, fell senseless, and was subsequently taken to the hospital, where she remained in a dangerous state for nearly two months. The prisoner remained in the room till the police came and arrested him, when it was dis-

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covered that he had attempted to commit suicide by cutting his own throat; the wound, however, was not serious, and he soon recovered. Doctor Collins, before the court, deposed to the prosecutrix having received four wounds, *viz.*, one on the stomach towards the left side, and another behind the left shoulder, but neither of a serious nature; the third was behind the right shoulder of some depth, but not dangerous, whilst the fourth and most severe wound was inflicted on the left side of the chest, in front and at the lower margin of the ribs; this wound, though not very wide, yet of considerable depth and about two inches long, Dr. Collins considered of a most serious and dangerous character, and to have been inflicted with a sharp pointed instrument: he also considered the prosecutrix's life in danger when she was brought to the hospital, and had medical treatment not been speedily available, that, in all probability, she would have sunk under the effects of the wounds.

"The *sooruthal*, drawn up by the police on the 22nd September, describing the above wounds, was read over and duly attested by the subscribing witnesses.

"The prisoner in his defence denied having wounded the prosecutrix, and declared the knife produced not to belong to him; he admitted, however, that he had gone to the prosecutrix's house by appointment at 8 P. M. on the night in question, and had slept with her; that about the morning she complained of a cat having scratched her and rushed out of the room; he, however, knew nothing of the wounds inflicted on her, as he was rendered insensible by some one unknown to him, cutting his throat; no witnesses were called to support the defence.

"Before the magistrate, the prisoner named certain parties, as having entered the room at night and wounded him and the prosecutrix, but was unable to establish the fact.

"Though there were no eye-witnesses to the fact of the prisoner having wounded the prosecutrix with the knife in question, yet there can be no doubt of his guilt. The prisoner admitted his having gone to her house at 8 P. M., and slept there till morning. It was clearly proved by the witnesses for the prosecution that no other person, save the prisoner, came to the house or visited the prosecutrix that night; immediately on her being wounded, the prosecutrix rushed from the room and fell on the terrace, where she was attended by her sister, a neighbour, and servant, whilst the prisoner remained in the room by himself, and the knife was found stained with blood on the bed where the prisoner was lying, and lastly, the parties accused by the prisoner of having visited the house and wounded him, were distinctly proved to have been at their houses during the whole night.

"The motive which actuated the prisoner to commit this deed was not disclosed, nor did there appear to have been any quarrel

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between the parties on the night in question; the nature of the wound inflicted and the weapon used, however, clearly indicated the murderous intent of the prisoner, and therefore I fully concurred in the verdict of 'guilty' recorded by the jury."

Sentence passed by the lower court.—Ten (10) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner has appealed; but his defence is unworthy of credit, and I concur in the conviction. The number and nature of the wounds evidence the deliberate character of the attempt to murder the prosecutrix. She states, that his object was to get her ornaments; and though the circumstances of the case do not warrant this presumption, yet it is most probable that robbery was the actuating motive. Whatever, however, may have been the motive, I think the sentence awarded by the sessions judge is not a suitable punishment for the crime of which the prisoner is convicted. The appeal is rejected."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

BISHONATH SETT.

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Case of BISHONATH SETT.

Sentence of the sessions judge, in a case of knowingly uttering a forged deed, affirmed, with a provision for the redemption of labor by the payment of a fine of 100 rupees

CRIME CHARGED.—1st count, forgery, in scratching out the figure 44 from the endorsement on the back of a stamp paper, sold on the 23rd January 1844, and putting the figure 20 in its place and converting it into a bond, dated 15th Phagoon 1228 B. S., for his own advantage, and forging it in the name of Shewukram Koomar, on the 26th June 1850; 2nd count, filing the above bond, knowing the same to be forged.

CRIME ESTABLISHED.—Causing the filing of a forged deed of sale in the court of the moonsiff of Mahanath, knowing the same to have been forged.

Committing Officer, Moulvee Wuheedoon Nubee, deputy magistrate of Hooghly.

Tried before Mr. C. Steer, officiating sessions judge of Hooghly, on the 26th November 1851.

Remarks by the officiating sessions judge.—"The prisoner instituted a suit against Shewukram, on the 2nd March 1850, in the moonsiff's court of Mahanath, for the recovery of two cottahs of land out of a parcel sold to him in 1228 B. S., by the defendant. The forged deed of sale was filed in that suit, but there was no investigation into the merits of the case, the prisoner being nonsuited, as he had sued on an inadequate stamp. This order was passed on the 23rd August 1850.

"On the 21st of September 1850, the prisoner sued again. After applying for and obtaining the deed of sale from the records of the nonsuited case, he filed it again. The moonsiff dismissed his suit on the 16th June 1851, and at length sent the case to the magistrate for his investigation, charging the prisoner with forgery. The deputy magistrate, to whom the investigation was entrusted, has committed the prisoner.

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"That the deed of sale is a forgery there can be no doubt. The stamp of the treasury seal has the year 1827 upon it, which indubitably shows that the paper was not issued till afterwards. The stamp vendor's monthly account of the time, filed in the collector's office, proves that the paper was only sold on the 23rd January 1844. The endorsement of the vendors had originally the year 1844 as the year of sale, but the latter two figures have been erased, and the year has been converted into 1820. The vendor was, moreover, only appointed in 1837. From this it is as clear as anything could make it that the deed of sale was not executed, as it purports to have been, in February 1822.

"The prisoner does not even dispute or deny that the paper is a forgery, but he tries to shift the odium from himself to the Mahanath moonsiff's sherishtedar, in whose custody, after a suitable fee, he asserts he committed all his papers of proof, but that he was bought over by the defendant and the zemindar, and at their instigation prepared and filed the forged deed in the place of the one which the prisoner had given him.

"There are ample grounds for believing that the prisoner did give his title deed to the sherishtedar. Indeed, the sherishtedar was suspended for six months, by the moonsiff, for the part he took in the suit. Moreover, there is reason to believe that the deed was, in the first instance, given by the sherishtedar to the prisoner's vakeel to file, and that it was not filed by the prisoner himself. But all this is quite immaterial to the prisoner unless it can be shown that the deed given to the sherishtedar was not the one now with the case. If there was anything leading to only a weak presumption that the deed was changed in the sherishtedar's hand, I should at once acquit the prisoner, but the fact is there is the best ground for concluding that the deed was the same. The prisoner admits that the deed with the case is the same one which was given to him by the judge's mohafiz out of the *nuthee* of the nonsuited case, and that he filed it himself on the second occasion of his instituting a suit against Shewukram; now if the deed which he received from the mohafiz was not the one the prisoner gave to the sherishtedar, he could not have failed in then detecting the truth. The deed is much torn, it is patched on the back with stripes of papers, and has dirty marks in particular places. If there had

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been any change of the deed, the fabricated one could never have been made to look so like the old and original one as to deceive the owner who had had it in his possession for years. I conclude therefore that the deed, which the prisoner acknowledges to have filed himself a second time, is the identical one he gave the sherishtedar in the first instance.

"Who actually forged it, there is of course no proof. The prisoner, who is only able to write his name, could not have done so, but he is the only party who could benefit by the forgery, and there is no doubt he procured it to be forged.

"The jury find the prisoner guilty of the charge as preferred in the calendar. Concurring in his guilt, I convict him of causing the filing of a forged deed of sale in the court of the moonsiff of Mahanath, knowing the same to have been forged, and sentence him to three (3) years' imprisonment with labor."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The deed is a palpable forgery. The alteration of the year of the sale of the stamp paper has been cleverly made, and is not perceptible until narrowly examined. The prisoner's plea is refuted by the endorsement on the back of the deed, certifying that this identical document was returned to the prisoner when the first case was nonsuited, and by his admission that he filed it in the present case. Had the deed not been the one he gave to the sherishtedar, he must, from its appearance alone, which is very peculiar, have detected it. I convict the prisoner of the crime charged, and confirm the sentence, with this modification, that the labor will be redeemed by the payment of a fine of rupees one hundred (100.)"

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

MOBAR JOLAH

versus

SREEMUNT DOOLIA (No. 6), MOHUN, ALIAS SUROOP BAROOEE (No. 7), RAKHALL DOME (No. 8), GOLAMEE HAREE (No. 10), BESTA HAREE (No. 13) AND PREMCHAND HAREE (No. 16).

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Case of SREEMUNT DOOLIA and others.

Sentence of seven years' imprisonment for dacoity confirmed in appeal, but deemed lenient.

CRIME CHARGED.—1st count, prisoners Nos. 6, 7, 8, 10, 13 and 16, with committing a dacoity in the house of the prosecutor and plundering therefrom property to the amount of rupees 435-8-0, on the night of 17th December 1851; 2nd count, with receiving a part of the plundered property in the above dacoity, knowing it to be such. Prisoner No. 16, with committing a dacoity in the house of the prosecutor and plundering therefrom property to the amount of rupees 435-8-0.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. S. Wauchope, magistrate of Hooghly.

Tried before Mr. E. Bentall, additional sessions judge, on the 22nd January 1852.

Remarks by the additional sessions judge.—" On the night of the 17th of December, a *phareedar*, (witness No. 3), was passing with a party of three other men near the village of Shahbazar, which is about half a *coss* from his *pharee*, and he apprehended the prisoners Nos. 6, 7 and 8, with various articles of spoil which they had with them. The prisoners live only a few *beegahs* from the place where they were apprehended, and it is said that all of them at once acknowledged that they had committed a dacoity at Rajepore, which is about one *coss* from their own village. It is shown that the dacoity took place, and the prosecutor says that his loss was about rupees five hundred (500). On the same night a burkundauz attached to the thanna of Dhuneekhally, but who had been stationed for two months at a place called Paranboa, which is one or one and a half *coss* from the above *pharee*, heard from the chowkeedar of that village that some of the inhabitants were absent, and accordingly he and three others watched their return in a sugar-cane field, six *beegahs* from the nearest of their houses, and at 3 A. M., they apprehended the prisoners Nos. 9, 10, 11 and 12, (the first and the last two acquitted on trial and reported in statement No. 8,) with a quantity of spoil of the same dacoity; they surrounded them and called for help. Paranboa is about two *coss* from the scene of the dacoity and half or three-eighths of a *coss* from Shahbazar, where the other set of prisoners was apprehended.

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It is a singular coincidence that two sets of dacoits should be apprehended on the same night in such a manner by different police officers; that in such case the prisoners should be near their own houses, where they knew the grounds, and yet be secured, the first set by a party only one in number more than themselves, and the other set by a party to which they were equal in number. Under the circumstances it would have been proper for the darogah to have made inquiries into the manner of the apprehension from some of the neighbours on the spot, which was not done. One could have supposed that such occurrences would have occasioned great disturbances in the villages where the dacoits were apprehended, but the prisoners were taken off, and few, if any, persons were assembled on the occasion, and the only witnesses to the capture in either instance are police and chowkeedars. The confessions which were made before the magistrate throw no light whatever on the manner of the apprehensions. The prisoner No. 6, Sreemunt Doolia, having been apprehended with stolen property on him near his own house, confessed before the darogah, but only one witness says he did so, he denied his guilt before the magistrate. The confessions of the prisoners, Nos. 7, 8, 13 and 16, made before the magistrate, all implicate him. Before the darogah he said he was apprehended as he was going home from the dacoity, but before the magistrate and before me he said he was apprehended at his own house. I set aside his confession before the darogah, for it is not proved, and it may have been taken by day, or without any assigned reason by night. He was apprehended at the same time as two other prisoners, who have been convicted, as he was returning from the dacoity with some of the spoil, and four prisoners, who confessed before the magistrate, implicate him in their confessions. I convict him of dacoity on the circumstantial evidence. The prisoner No. 7, Mohun, *alias* Suroop Barooce, having been apprehended at night as he was entering his village with a portion of the plundered property, confessed his guilt before the darogah, as is shown by one witness, and of which there is no doubt, as he repeated his confession two days afterwards before the magistrate; he said that he was at the dacoity and received a part of the spoil. I convict him on his confession and the circumstances of the case. The prisoner No. 8, Rakhall Dome, of the same village, was apprehended at the same time as the above, and is said to have confessed before the police, but that cannot be proved, and if he did confess, it was not until the 19th of December; the darogah gives as the reason for the delay that he had not time to take the confession, but it does not appear why he did not send him off to the station until the evening of the following day. On the 22nd of December, he confessed before the magistrate, who recognized him before me as

a man who did confess before him, although he could not tell his name; another man, Besta, prisoner No. 13, was apprehended on the 19th of December, and the darogah was able to send him to the station, so that the magistrate was able to take his confession on Saturday, the 20th of September; these circumstances make me doubt whether the prisoner was willing to confess until he was sent off. However, I have no reason to doubt his confession before the magistrate. There is, however, an error in it, for he stated that he was apprehended by Mudhoo burkundauz, who at the time was apprehending the Paranboa parties; he might have intended to say Mudhoo peadah; only one other confessing prisoner took his name before the magistrate. I convict him on the circumstances of his apprehension and on his confession before the magistrate. The prisoner No. 10, Golamee Haree, was apprehended ten or twelve *beegahs* from his house, and confessed on the 22nd of December, before the magistrate, who recognizes him as having made the confession; he is said to have confessed before the darogah, but that cannot be proved. Before the magistrate he said that he was with the dacoits, but that he remained one-eighth of a *coss* from the scene of the dacoity, he, however, received a portion of the spoil. I convict him of dacoity on his confession before the magistrate. Besta Haree, No. 13, of Shahbazar, was apprehended on the 19th of December, and on that day he confessed before the police, and on the 20th, he confessed also before the magistrate, as is shown by two witnesses. Some property is said to have been found in his house, but this cannot be proved, and he denied it on the trial and disclaimed it. I convict him on his confession of dacoity at the house of the prosecutor Premchand Haree. Prisoner No. 16, lives at Bennah, which is half a *coss* from Shahbazar. He was apprehended on the 20th December, owing to the confession of No. 6, and he confessed (as witnesses say after night-fall) on the same day before the darogah, and he confessed again before the magistrate, (who identified him on the trial) on the 2nd of December. I convict him on his own confession of dacoity at the house of the prosecutor."

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Case of SREEMUNT DOOLIA and others.

Sentence passed by the lower court.—To be imprisoned with labor and irons for seven (7) years each.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"It is evident that the police obtained intelligence, which induced them to be on the watch for the return of these prisoners from their marauding expedition. It would have been much more satisfactory to have had this intelligence placed before the court, and it was doubtless kept back from some mistaken notion that an open avowal of it might get the informer into trouble. The prisoners in their appeal state that one Deelee was the informer, and it is quite possible that he might

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have been. I find him mentioned in the Mofussil confession of Sreemunt as one of the persons who proposed the expedition. Endeavours should have been made by the magistrate to discover who the informer was, and to obtain his evidence. However, I see no reason to doubt the truth of the capture of most of the prisoners, with portions of the plundered property in their possession. Their confessions to the darogah and to the magistrate are most circumstantial, and have every appearance of being true. There has been a deficiency of proof of those taken before the darogah. This very probably is to be attributed to the evidence of the subscribing witnesses not having been taken by the magistrate. Time was thus given, which has been taken advantage of, to tamper with them, and to induce them to give such evidence as might possibly have an effect favorable to the prisoners. All have, however, confessed before the magistrate, except Sreemunt, and his Mofussil confession is satisfactorily proved by one of the subscribing witnesses. This person appears to be one whose evidence may be credited. Besides the confession there is other proof of a circumstantial nature; and there appears no reason to interfere in favor of the prisoners' with the lenient sentence passed upon them by the sessions judge. The appeal is rejected.

"The word *huluf* has been used throughout the sessions papers as a translation of the word affirmation. It has already been pointed out to the additional sessions judge that the use of this word is objectionable."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

NIDHEE JENNA.

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Case of NIDHEE JENNA.

The conviction of the prisoner upon a charge of perjury, upheld by the Nizamut Adawlut, but punishment reduced to one year's imprisonment, with labor and in irons, with reference to the circumstances of the case.

CRIME CHARGED.—Perjury, in having on the 17th December 1851, deposed, under a solemn declaration taken instead of an oath, before the joint magistrate of Cuttack, that his name was Gorai Raot, and his father's name Brooud Raot, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer, Mr. W. M. Beaufort, joint magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge, on the 20th February 1852.

Remarks by the sessions judge.—"The following are the particulars of the case:—Chowdree Bidyadhur Das preferred a charge of assault against Gopaul Das, in the foujdaree court, and cited Gorai Raot, as one of the witnesses to his defence, and being unable to cause the attendance of the said individual, he got the prisoner Nidhee Jenna to personate him, and on the 17th December 1851, when the prisoner was questioned regarding his name and parentage by the mohurir, who recorded his deposition in the court of the joint magistrate, he stated that his name was Gorai Raot, and that of his father Brooud Raot, but the plaintiff having discovered the fraud, informed the joint magistrate that his name was Nidhee Jenna, and not Gorai Raot. The joint magistrate himself asked him his name and he admitted that it was Nidhee Jenna, and that he was the son of Urjoon Jenna, and said that he had been instigated and tutored by Gopaul Das to state that his name was Gorai Raot.

"Before this court the prisoner denied having himself stated that his name was Gorai Raot, and affirmed that he gave his correct name Nidhee Jenna, and that the *amlah*, who recorded his deposition, wrote Gorai Raot at the dictation of Gopaul Das, who caused his attendance before the joint magistrate's court, and he named two witnesses to substantiate his statement, but one of them denied all knowledge of the fact and the other could not be found.

"Witnesses Nos. 1, 2 and 3 deposed to the identity of the prisoner and that his name is Nidhee Jenna, and Nos. 5, 6 and 7 deposed to his having stated, under solemn declaration in the joint magistrate's court, that his name was Gorai Raot.

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"The *futwa* of the law officer convicted the prisoner of the crime charged, and concurring in his conviction, I sentenced him under Clause 2, Section IX. Regulation XVII. of 1817, to three (3) years' imprisonment with labor in irons, but as under the circumstances of the case, I consider the said punishment more than adequate to the prisoner's offence, I beg, under Clause 3 of the said Section, to recommend that it be reduced to one (1) year's imprisonment.

"My reasons for so doing are *first*, because, notwithstanding his statement first made before the mohurir, to the effect that his name was Gorai Raot, was false, and was made on a point material to the issue of the case, inasmuch that had he at once told his real name, his evidence would not (as he was not cited as a witness in the first instance) have received that degree of credit which it might have done, had not the deception practised by him been detected. There is no direct proof on record that he did not witness the facts to which he deposed, though I do not think it very likely that he really did so; *secondly*, because the prisoner, on being asked his name by the joint magistrate, at once acknowledged that it was Nidhee Jenna.

"This case was first committed to the sessions by the joint magistrate, Mr. W. M. Beaufort, on the 17th December last, but he afterwards, at the suggestion of the magistrate, requested to be temporarily allowed to withdraw the commitment, to enable him to summon evidence to the identity of the prisoner, and having been permitted to do so, he re-committed it on the 29th ultimo. I do not, however, after having perused the record of the case, think that there was any actual necessity for summoning witnesses to the identity of the prisoner, as he himself admitted before the joint magistrate that his name was Nidhee Jenna, and that he had given evidence under the false name of Gorai Raot, at the instigation of Gopaul Das, but Mr. Beaufort does not appear to have conducted the investigation of the case with the care that he ought to have done, for the witnesses Nos. 6 and 7 stated before this court that they were not made to affix their signatures to the statement of the prisoner in which he first admitted that his name was Nidhee Jenna, until two or three days after it was written, and the case had been, in the first instance, committed to the sessions, and Nidhee Jenna's examination, as defendant, is not attested at all by the witnesses. It, moreover, appears that no inquiry was made into the conduct of Gopaul Das, who caused the prisoner's attendance to give evidence on his behalf, though he evidently had not cited him as a witness, and he has apparently been guilty of subornation of perjury."

Remarks by the Nizamut Adawlut.)—Present: Mr. A. J. M. Mills.)—"The prisoner has, I think, been properly convicted of

perjury. He gave evidence under a false name with the view of rendering it admissible; he therefore perjured himself on a point material to the issue of the proceedings. I convict the prisoner and, as recommended by the sessions judge, reduce the punishment to one (1) year's imprisonment with labor and in irons."

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PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

RAMLAL SHAH

versus

SADOOLLAH (No. 7), JUREEP PARAMANICK (No. 8), BURO BOODHYE (No. 12), MANICK MULLAH (No. 13) AND DEWANUT, ALIAS ENAIT SHEIKH (No. 15).

1852. March 26. Case of Sadoollah and others.

The sentence of the sessions judge, in a case of dacoity, and knowingly receiving property obtained by dacoity, affirmed by the Nizamut. The court remarked that the prisoners convicted of receiving might justly have been convicted of dacoity.

CRIME CHARGED.—Prisoners Nos. 7, 8, 12, 13 and 15; 1st, dacoity in the house of Ramlal Shah, prosecutor; 2nd, knowingly receiving property plundered in the above dacoity.

CRIME ESTABLISHED.—Prisoner No. 7, dacoity in the house of Ramlal Shah; prisoners Nos. 8, 12, 13 and 15, knowingly receiving property plundered in the above dacoity.

Committing Officer, Mr. A. Littledale, magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 19th January 1852.

Remarks by the sessions judge.—"This was a simple dacoity committed in the house of the prosecutor, who was a dealer in cloth, and from that circumstance it has been difficult to identify the new clothes, and where there was a doubt, I have let the prisoners have the benefit of such doubt. No. 7 confessed before the magistrate (and which confession was proved to have been voluntary) that he had accompanied the dacoits, who threatened him if he would not go, and one of them gave him four rupees, which was all he received. Two articles of clothing found in a *kulsee* outside of his house, he denied all knowledge of, and there seems to be some doubt how they got there, and more, these articles are not mentioned as received by him in the confession. Nos. 8, 12, 13 and 15 I have convicted of knowingly receiving plundered property; No. 8 of the articles numbered 19 and 20 (clothes), and which he claimed but totally failed to prove his right to them, No. 12 of the articles numbered 29 and 30 (clothes) found in a *hauree* in his house. No. 13 of a gold *nuth* which the prisoner claimed, and witnesses deposed it was his, but the maker of the *nuth*, whom the prisoner brought forward, denied all knowledge of it, and though only two annas weight, it was an article the maker must have been able to identify again, and No. 15 I convict of

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knowingly receiving the articles numbered 9 to 18, found in a house he occupied as a servant. Two of them (Nos. 7 and 8, both *dhotees*) he claimed as his own, but failed to establish his right to them. The prisoners have been sentenced as stated in the preceding column, and the trial was held under Act XXIV. of 1843, and the Court's Circular Order of the 6th July 1844."

Sentence passed by the lower court.—Prisoners Nos. 7, 8 and 12, to be imprisoned with labor and irons for the period of five (5) years. Prisoner No. 13, to four (4) years' imprisonment with labor and irons. Prisoner No. 15, to five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed. The prisoner No. 7, was apprehended on the information of Kania Shah, and on his confession the other prisoners were severally apprehended.

"I have no doubt of the truthfulness of the confessions made by the prisoner No. 7, before the darogah and magistrate. They have been duly attested by the subscribing witnesses, and are corroborated by the finding of various articles of stolen property on the person, or in the possession of the persons named by him as his accomplices, but the difficulty of recognizing new clothes and articles in common use, which was the bulk of the property plundered, has operated to the acquittal of many of the accused.

"The property found in the possession of the prisoners Nos. 8, 12, 13 and 15 has been satisfactorily identified; some of the articles the prisoners claim as their own; regarding others, they allege that they were surreptitiously placed in their houses or that they have no knowledge of them. The witnesses cited by them to identify the articles so claimed do not support their plea, and the evidence to the finding of the property in the possession of the prisoners is clear and credible.

"The sessions judge convicts these prisoners of knowingly receiving stolen property. They might with more propriety have been convicted of dacoity.

"The fact of their having taken a part in the robbery as stated in the confession of prisoner No. 7, may, I think, be fairly and strongly presumed, from the circumstance of the stolen articles having been found in their houses very shortly after the crime was committed, and of the prisoner refusing to account for their possession, but as I cannot increase the punishment, I do not interfere with the conviction."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

MOHUN ROY AND MUSST. SEEBEEA

versus

BUNDHOO (No. 1), JUGOOA (No. 2), DHWOOA (No. 3), BULWA (No. 4), DILWA (No. 5), GOONDIA No. 6), BOODHUN (No. 7) AND BHIKNA (No. 8).

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Case of BUNDHOO and others.

The sentence of the sessions judge, in a case of highway-robbery, confirmed by the Nizamut Adawlut.

CRIME CHARGED.—Nos. 1 to 8, highway-robbery and plunder of property, valued at rupees 32-0-6, attended with slight beating. Nos. 3, 4 and 5, having in their possession a part of the above plundered property, valued at rupees 10-5-0, well knowing it to be such at the time.

CRIME ESTABLISHED.—Highway-robbery and plunder of property, valued at rupees 32-0-6.

Committing Officer, Mr. A. G. Wilson, deputy magistrate of Nowadah, with the powers of a magistrate.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 7th January 1852.

Remarks by the sessions judge.—"The prosecutor and prosecutrix, servants of Ikbal Alee, vakeel, in company with a party of some eight or ten others, including the three eye-witnesses, Sheikh Mungur (witness No. 1), Leela Rai (witness No. 2) and Chunnoo (witness No. 3), about night-fall, on 16th November last, were proceeding to a well, half a mile distant from the village of Muckdoompore, to perform certain ceremony connected with a marriage in their master's house, torches burning and the women singing, when on passing a *ruhur* field, they were suddenly attacked by a band of robbers, who plundered the prosecutrix of her ornaments and the party of such clothes and articles as they could lay hands on. The prosecutor's party resisted, and succeeded in seizing Bundhoo (prisoner No. 1). The other robbers decamped, not, however, until they had been recognized by the prosecutor's party.

"Bundhoo Rajwar (prisoner No. 1) was forthwith made over to Bundhoo Dosadh (witness No. 12), *gorahit* of the village, to whom naming Jugooa (prisoner No. 2), as having been one of his companions, the *gorahit* at once apprehended him and took both to the thanna. On inquiry following, the other prisoners were named and apprehended, and on their houses being searched, articles Nos. 1 to 9 of the plundered property were recovered in Sobrun's house (absconded,) and in Dhwooa (prisoner No. 3), Bulwa (prisoner No. 4) and Dilwa (prisoner No. 5's) houses.

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"The prosecutor and witnesses abovenamed depose to the foregoing particulars, and Sumbhoo (witness No. 4), Giree (witness No. 5) and Chatoo (witness No. 6), to the recovery of the plundered property.

"Bundhoo (prisoner No. 1), has always pleaded 'guilty,' on every occasion, naming Jugooa (prisoner No. 2), as his companion together with others absconded, and also Boodhun (prisoner No. 7), before the police and magistrate. His person also showed marks of blows.

"Jugooa (prisoner No. 2), has always set up a simple denial, pleading an *alibi* occasioned through sickness at home, but calling no witnesses before this court, and those he summoned before the magistrate denying all knowledge thereof.

"Dhwooa (prisoner No. 3), Bulwa (prisoner No. 4), Dilwa (prisoner No. 5), set up no particular defence beyond ignorance how the plundered property happened to be found in their houses, excepting Dhwooa (prisoner No. 3), who claimed the clothes, disacknowledging, however, the broken ornaments, and before this court alleging he was implicated out of spite by the *ticcadar*, but on calling for a pending case alluded to by him in proof thereof, it turned out to be in itself about a very trivial matter with which too his connexion in any way was not apparent, and which he himself also failed to explain. His person also showed marks of blows, which before the police he attempted to account for in the most absurd manner. Bulwa (prisoner No. 4) and Dilwa (prisoner No. 5), named the same witnesses apparently about an *alibi* before the police, but when summoned before the magistrate they knew nothing. None of the prisoners called any witnesses before this court.

"Goondia (prisoner No. 6), Boodhun (prisoner No. 7) and Bhikna (prisoner No. 8) have always confined their defence to simply pleading 'not guilty.'

"The *futwa* of the law officer convicts all the prisoners of highway-robbery, and Dhwooa (prisoner No. 3), Bulwa (prisoner No. 4) and Dilwa (prisoner No. 5) also of possession of part of the plundered property and declares them liable to discretionary punishment by *akoobut*.

"I find no grounds to distrust the truthfulness of the prosecution, to a certain extent circumstantially corroborated. The prisoners were all named in the first instance as having been recognized. They are well-known characters of the neighbourhood but of different villages, and the circumstances under which the attack took place peculiarly facilitated recognition. There were errors of dates in the police returns, but these I think stand adequately explained by the jemadar Imamooddeen Hossein. The defence set up by the prisoners severally from first to the last has invariably been frivolous and worthless, and in

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addition thereto they were notorious bad characters, some of them also having been heretofore engaged together in the same crimes. Bundhoo (prisoner No. 1) was imprisoned with Dilwa (prisoner No. 5) for theft in 1840, and again in 1843, with Bulwa (prisoner No. 4); Jugooa (prisoner No. 2) was imprisoned one year, 1850, in default of security; Dhwooa (prisoner No. 3), though not on the existing records of this district, acknowledges having been imprisoned in the Hazareebaugh district; Bulwa (prisoner No. 4), in 1838, underwent seven (7) years' imprisonment for dacoity, and again for theft and possession of stolen property in 1840 and 1843. Concurring with the law officer with reference to the foregoing, they have been sentenced as within."

Sentence passed by the lower court.—No. 4, (9) nine years' imprisonment with labor and irons in banishment. Nos. 1, 2, 3 and 5, each to seven (7) years', Nos. 6, 7 and 8, each to five (5) years', all with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—" The prisoners have appealed. The prisoner Bundhoo confessed before the police and the magistrate, and pleaded 'guilty' at the trial. His appeal therefore is frivolous. The pleas of the other prisoners, which are the same as those urged at the trial, avail them nothing. The evidence to their identification, as having been present in the attack, has been direct and consistent throughout; and in the case of the prisoners Nos. 3, 4 and 5, is corroborated by the finding of some of the plundered articles concealed in their houses. I see no grounds for attaching any doubt to the testimony of the eye-witnesses. They fought with the robbers, whose persons were well-known to them; and they had ample opportunity to recognize them. Finding therefore no reason for interference with the conviction and sentence, I dismiss the appeal."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

PRANNATH BANERJEA.

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Case of PRANNATH BANERJEA.

The prisoner, a dâk runner, convicted, under Act XVII. of 1837, by the Nizamut Adawlut, of privity after the fact to the opening of a letter which was in the dâk bag.

CRIME CHARGED.—1st count, opening a letter to the address of Nyan Beparee, with the intention of fraudulently appropriating its contents, he being in the employ of Government in the Post Office Department, in contravention of Section XXXIII. Act XVII. of 1837; and, 2nd count, being accomplice to the same.

CRIME ESTABLISHED.—Accessary after the fact to the opening of a letter to the address of Nyan Beparee, with the intention of fraudulently appropriating its contents.

Committing Officer, Mr. T. B. Mactier, joint magistrate of Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 9th January 1852.

Remarks by the sessions judge.—"This prosecution was instituted by the Post Master of Furreedpore, in consequence of a return letter, to the address of Nyan Beparee, having been received by him from the Nobobgunge Post Office division in an open state. The evidence of the witnesses Nos. 1 and 2 proved that when the prisoner No. 1 (who was the mohurir of the Nobobgunge Post Office Station, and who, in consequence of his being required by the deputy magistrate of Manickgunge, in some case pending in his court) made over charge of his office to the prisoner No. 2, who was sent to act for him, he delivered the said opened letter to his *locum tenens,* adding that there was nothing to fear, and to forward the said letter with the other return letters to Furreedpore. The above evidence also proved the letter to be that which was made over to the acting mohurir in an opened state. The evidence of witnesses Nos. 3 and 7 proved that the letter was received in an opened state at the Furreedpore Post Office, and that witness No. 7, who is the dâk moonshee, reported the circumstance to the post master. Witness No. 8, the addressee, deposed that he heard of the letter having been taken to his house by one Neamut Hurkara, who declined to take seven annas postage, which was offered by his family for it. It contained no money. I may add that the postage of the letter was only two annas. The evidence of witnesses Nos. 4, 5 and 6 proved that some seven or eight letters were made over by the prisoner No. 1 to witness No. 4 for distribution, and that the said witness returned them

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to prisoner No. 2. One of these witnesses deposed, that among the said letters, there was a letter for Nyan Beparee, but not in an opened state. The prisoner No. 1 denied the charge, and said that in delivering over charge of his (late) office to prisoner No. 2, he made over to him no *letters*, as they were with the peons for distribution, and that the peons accounted to him (prisoner No. 2) for the letters. He did not wish the evidence of his witnesses to be taken. Prisoner No. 2 also denied the charge, and urged that the letter was included in the charge papers, and was made over to him in an opened state. The evidence of witness No. 6, Neamut Hurkara, (cited by both the prisoners) was taken at this prisoner's request. The witness deposed that the letter was made over by himself to prisoner No. 1 in an opened state. The prisoner No. 1 on being committed to the sessions was asked by the joint magistrate, as is the custom, if he had any witnesses. He replied, Neamut Hurkara, who would depose that he (the hurkara) delivered the letter to him in an opened state. This admission of the prisoner, coupled with the evidence of the witnesses Nos. 1 and 2, satisfied me of his guilt, and of the innocence of the prisoner No. 2; and in concurrence with the *futwa* of the law officer, which convicted prisoner No. 1 of being an accessary after the fact to the opening of the letter, I sentenced him to one (1) year's imprisonment, without labor, and acquitted prisoner No. 2."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoner in answer states that *he made over no letters* to Bungoo Chunder Ghose, who was sent to relieve him. Two dâk hurkaras, on the contrary, have sworn that the prisoner made over some eight or nine letters to the acting officer, who it appears had never before been employed in the department; amongst them was one *opened*, regarding which a conversation took place, and he, prisoner, on being told by his successor of the *opened* letter, answered 'never mind, send 'it on'.

"The prisoner's witness, Neamut, on the other hand, deposes to having given him *an opened letter* with a request that the prisoner would report the particulars, which letter he locked up in his box.

"The fact then that the opened letter had gone through the prisoner's hands, though he denies having made over *any* letter to his successor, is proved, even by the evidence for the defence. There was no money in the letter; but it is clearly established that the prisoner was aware that a letter had been opened, and its appearance plainly proves the fact. He made no report to that effect, but, if his witness is to be credited, was privy to the offence; which it was his duty not only to have made known to his superior, but to have inquired into. I convict him of

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privity after the fact. In his appeal, he has merely accused his successor; but he has been acquitted by the sessions judge. I see no reason to interfere on the point of conviction, under Act XVII. of 1837. The sentence, indeed, appears a very lenient one; as, though no money was abstracted, no doubt the letter was supposed to contain money, and the prisoner was at the time an officer of Government, holding a situation of great trust."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOPEELAL UDHEEKAREE

versus

MOHENDRO DOME (No. 1), JEEBUN DOME (No. 2) AND HARA BYRAGEE (No. 3).

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In a case of dacoity, the conviction of two prisoners captured in the act, and one recognized by several witnesses, who were engaged in personal conflict with them, confirmed.

CRIME CHARGED.—1st, dacoity attended with wounding; 2nd, prisoner No. 2, knowingly having in his possession plundered property acquired by the above dacoity attended with wounding.

CRIME ESTABLISHED.—1st, dacoity attended with wounding, and 2nd, prisoner No. 2, knowingly having in his possession plundered property acquired by the above dacoity attended with wounding.

Committing Officer, Mr. G. Hewett, deputy magistrate of Cutwa, with full powers.

Tried before Mr. J. H. Patton, sessions judge of East Burdwan, on the 27th December 1851.

Remarks by the sessions judge.—"This is again a case of dacoity boldly resisted by the chowkeedars and villagers. It was perpetrated during the absence of the master of the house, Sham Chand Gosain, and unattended fortunately with plunder, with the solitary exception of a brass water-pot *(ghurra)*. It appears in evidence that while the prosecutor Gopeelal Udheekaree, and witness Juludhur Chowkeedar, Kali Churn Rai, Kishwur Mohun Rai and others were sitting smoking and conversing after their evening meal at the outer gate, about midnight, a gang of dacoits attacked the house, and while some entered the premises others remained outside, going through their usual manœuvre of intimidation by jumping about with drawn swords. An alarm was instantly given and the villagers collected, and by their voices and gestures encouraged the witnesses Juludhur Chowkeedar, Khudiram Chowkeedar and Gunesh Tetulia, who were engaged in a conflict with the party outside. These three succeeded first in wounding and capturing the prisoner No. 1, Mohendro Dome, the former with a sword, and the latter with a

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club, Khuderam using an axe. In the fight the chowkeedar Juludhur was thrice wounded by the prisoner. They then confronted the prisoner No. 2, Jeebun Dome, on his egress from the premises with the brass water-pot, who throwing it down rushed on his assailants, and succeeded in inflicting a sword cut on the head of Juludhur and another on the upper lip of Khudiram. He was then felled by the blows dealt him by Khudiram with the axe and Gunesh with the club and secured, together with the plundered property. The prisoner No. 3, Hara Byragee, was afterwards distinctly identified by the trio, and two others while proceeding to attack the former, and challenged by name by them, who declared they would report him to the darogah the following day and describe minutely his appearance and the manner in which he was equipped. He, however, escaped at the time, but was subsequently arrested and is named in the Mofussil confessions of the prisoners Nos. 1 and 2. The evidence for the prosecution consists of five witnesses, who directly prove the fact, the arrest of the prisoners Nos. 1 and 2 at the time, the finding and identity of the plundered property and the recognition of the prisoner No. 3, on the night of the occurrence. Three witnesses, two exclusive of the five above alluded to, attest the Mofussil confessions of the prisoners Nos. 1 and 2, and prove that they were voluntarily made, without the adoption of any unlawful means on the part of the police to induce them. Two of these witnesses also attest the *sooruthal* made by the darogah, of the wounds exhibited on the person of Juludhur Chowkedar, and that document has been filed with the record of the trial. But I have been compelled to reject the other *sooruthal* in regard to the wound received by Khuderam Chowkeedar, as informally prepared and have called the deputy magistrate's attention to the irregularity, with the caution that it may not be repeated. The admitted paper, however, is sufficient for the purposes of the trial as documentary proof of the aggravation of wounding. The prisoners before this court plead 'not guilty.' Mohendro Dome No. 1, and his brother Jeebun No. 2, deny their Mofussil confessions, and say they were unlawfully made prisoners in the house of the Gosain, which was attacked by dacoits, while they were residing there, as laborers hired expressly by him, on their way through his village to Moorshedabad, whither they were proceeding to seek employment. They, however, called no witnesses to their defence. Hara Byragee, No. 3, pleads an *alibi*, and declares himself the victim of a cabal got up against him by the witness for the prosecution. Budun Mundul for seducing his daughter-in-law, and inducing her to abjure her own faith and adopt the tenets of the Byragee sect, calling three out of the five witnesses named in his defence. These witnesses do not prove the *alibi*, the only plea sought to be established by the prisoner

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through their testimony. The guilt of the prisoners is to my mind fully and clearly established. The evidence against the two first is consistent and unreservedly of the most conclusive character, and although there is some slight discrepancy in the testimony of one of the parties as to the minor circumstances attending the recognition of the prisoner No. 3, it is easily accounted for by the confusion of the moment, and cannot for an instant be weighed against the clear, precise, minute, circumstantial detail of the fact given by the witnesses Juludhur, Khudiram and Gunesh, who were almost in personal contact with the prisoner at the time they identified him, who addressed him by name and who were quite familiar with his appearance, in consequence of his long previous residence in their village. This is an excellent commitment, and reflects credit on the deputy magistrate of the police subdivision of Cutwa, who has, moreover, very properly recommended rewards for the individuals, who took a prominent part in confronting and resisting the dacoits."

Sentence passed by the lower court.—Each to fourteen (14) years' imprisonment, and in lieu of stripes to a further period of two (2) years, total sixteen (16) years' imprisonment each with hard labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" The petition of appeal has been signed by the two first prisoners only, but the contents of it show that it is presented also on the part of the third. I shall consider it therefore as the appeal of the three. Regarding the guilt of the two first prisoners, there cannot be a question. They were secured in the very act. The way in which they attempt to account for it is not credible. The proof against the third prisoner is the evidence of eye-witnesses. I view such proof in cases of dacoity generally with great suspicion, but some of the parties who depose that they recognized this man, were immediately, from the result, in conflict with the dacoits, and they only pretend to have identified this one man. The judge, before whom they gave evidence, had an opportunity, such as is not afforded me, of judging of the probability of their statements being true from the manner in which they gave them, and he appears to be convinced that they were so. There do not, therefore, appear to be any grounds for interfering with the conviction and sentence.

" I have to remark that the judge is in error in stating that the other prisoners *named* Hara Byragee in their confessions. They did not do so; but one of them (Mohendro) said that a Bustom (*alias* Byragee) of Aopore, invited him to commit the dacoity."

PRESENT:

J. R. COLVIN, Esq., *Judge.*

KALACHAND SINGH

versus

DHOOKEERAM MANNAH (No. 1), RAMCHAND SONAPUTTEE (No. 2) AND SHEIKH PANOOLLAH (No. 3).

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Case of DHOOKEERAM MANNAH.

Conviction of prisoners on a charge of privity to riotous assault with plunder, in the course of which murder was committed, and sentences of the sessions court of imprisonment for seven years' with labor, upheld by the Nizamut Adawlut.

CRIME CHARGED.—Wilful murder of Surroop Chunder Biswas, and plunder of property from the cutcherry of the deceased, value Company's rupees 163-8-0.

CRIME ESTABLISHED.—Privity to an attack on the cutcherry, of which Surroop Chunder Biswas was in charge when he was murdered, and plundering property valued at rupees 163-8-0.

Committing Officer, Mr. E. Jenkins, magistrate of Howrah, 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 13th December 1851.

Remarks by the additional sessions judge.—"The prisoners were committed on the 23rd of May, for dacoity, but when the case came on for trial before the sessions judge, he, on the 8th of September, quashed the commitment and stated.—'There is 'not the slightest foundation for supposing that the prisoners 'attacked the cutcherry with the intention of committing a 'dacoity, and that in so doing the plundering and murder 'took place. The facts deposed to in the foujdaree show that 'the murder or assassination of Surroop Chunder Biswas was 'the real object of the parties who attacked the cutcherry, and 'that to effect it, the cutcherry was broken into by armed men, 'who, in the licence of the moment, may have plundered the place 'as well as murdered the naib', in consequence of which the prisoners were committed on these charges on the 14th of October. Such delay as occurred before the case was finally disposed of, is not likely to take place again, as the joint magistrate would now be able to keep the witnesses in attendance, and assign their presence as a reason for requesting the sessions judge to take up the case without delay. The village of Sonamae belongs to five different shareholders, who collect their rents with different accounts. There are two different zemindaree cutcherries in the village, one of which belongs to Mudun Bose, ijaradar, and the other to Joykishen. The deceased man, Surroop Chunder Biswas, was the naib of Mudun Bose, and may have been considered as oppressive by some of the villagers. On the 27th of April he was asleep at his cutcherry. About 12 o'clock at night, or a little after, the cutcherry was attacked by a party of armed men having a torch, and Surroop Chunder, having run

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into the premises of Kala Chand Bhundaree, whose house is quite close to the cutcherry, was followed and killed. He had received three or more wounds, one of which cut through the large blood-vessels on the right side of the neck, and is supposed to have chiefly occasioned his death. He died very soon on the spot, and in great probability from loss of blood. Rupees 150 in cash and rupees 13-8-0 worth of property were carried off, and the papers were scattered, but there is no reason to suppose that the object of the attack on the cutcherry was to destroy documents. The next morning the chowkeedar carried two written reports of the case to the darogah; but there is no record of any information given by the chowkeedar himself at the thanna. In the written reports there is no mention of any of the gang having been recognized. The darogah at once proceeded to the spot and held the inquest, and the evidence of the prosecutor is said to have been taken on the 28th of April. In it he accused the prisoners. He himself is the gomashta serving under Surroop Chunder, but he was not present on the night of the attack on the cutcherry. His deposition has the signature of the magistrate dated 5th of May. The evidence of the witnesses, who say that they recognized the prisoners, appears to have been taken on the 29th and 30th of April, but no prisoner was apprehended until the 30th of April, and prisoner No. 5 not until the 1st of May; yet they had not run off or concealed themselves. They were taken at their houses or when at work in their fields. It appears to me to be a very doubtful point when any prisoner was first said to have been recognized; and the great delay in apprehending the prisoners, who were living in the village in which such a very serious case was being investigated by the darogah, the mohurir and jemadar, when the naib of the ijaradar had been killed, and the gomashta prosecuted, gives strong reason for thinking that they were not said to have been recognized by any one until a short time before their apprehension. If they had been only suspected, they would have had a burkundauz to guard them and to prevent their going to work in the fields. Two of the witnesses had forgotten that they had recognized the prisoners, but as they were themselves beaten and one of them was previously acquainted with the prisoners, the circumstances would have left a deep impression on their minds. Three other witnesses say that they recognized some of the prisoners, but the great delay, which there is strong reason to believe took place before they first said so, prevents my placing trust in their depositions that any of the villagers had anything to do with the crime. The prisoners Nos. 1, 2 and 3 confessed more or less guilt before the police and the magistrate. No. 1 stated before the police that he went with the gang and witnessed some of the beating and cutting which took

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place, but before the magistrate he only stated that he was pressed to stay with the gang, and that he ran off when the attack was first made. The prisoner No. 2 stated that he was enticed to join the assembly of men and was compelled to remain with them; that they attacked the cutcherry by the light of a *mussal*, and he then ran off; and he made a similar deposition before the magistrate, except that the expression of compulsion does not appear. No. 3 made a very similar statement before the police, but before the magistrate he said nothing about the attack, only that he was with a gang of about 20 or 25 persons near the scene of crime. As there is no evidence against the prisoners which can be trusted except their own confessions, they cannot be convicted of a greater crime than those confessions comprehend. There is no reason to doubt the truth of the confessions, and that they were made voluntarily, except the improbability of them, *viz.*, that the prisoners should have been compelled to remain with the gang of men against their own wishes, and the evident desire to throw all blame on others rather than on themselves, which might cause suspicion that they had the idea that they were not criminating themselves but were giving evidence against others. However, the improbability that the prisoners were guilty only to the extent which they have confessed is not a reason for setting aside the confessions. If they had only called out and given an alarm, the crime might have been prevented, for they were only two or three *russees* from the cutcherry. The law officer finds the prisoners guilty of privity to the crime with which they are charged. And as they have confessed neither participation in the act nor in the design, their confessed crime cannot be considered of a more heinous nature than privity."

Sentence passed by the lower court.—Each, seven (7) years' imprisonment, with labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"The appeal of the prisoners, in so far as it regards the grounds on which this conviction rests, *viz*, their own confessions, is on a plea that a mere concealment of what the parties saw is not a criminal offence, as the Government police is appointed to detect criminals. The facts confessed are, however, clearly of a punishable privity to the commission of a very serious outrage, in the course of which murder was committed.

"I see no ground for interfering with the convictions and sentences."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

BHUGUTCHUNDER PAL

versus

SHEIKH GUREEBOOLLAH (No. 12), SHOROOP CHUNDER MOHOTAH (No. 13), SHAMUTOOLLAH (No. 14), SHEIKH KOOSHA (No. 15), SHEIKH SHEYROO (No. 16), SUMMEERUDDIN SHEIKH (No. 17), JHAPOO KHAN (No. 18), BEESHOO KHAN (No. 19), MADAREE SHEIKH (No. 20), GOPAL SINGH (No. 21), GOVINDDAS KASHAREE (No. 22), OLEE MAHOMED (No. 23 APPELLANTS) AND EROO SONAR (No. 24).

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Case of SHEIKH GUREEBOOLLAH and others.

In a case of dacoity with wounding with a sword, in which the leaders were old offenders, a sentence on them of fourteen years' imprisonment, and upon the others of seven years' imprisonment considered, under the special circumstances stated, to be too lenient.

CRIME CHARGED.—Prisoners Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23, committing dacoity, by attacking the prosecutor's house at night, armed with weapons, severely wounding Chuttrodharee Singh, wounding Pundita Sheikh, breaking open locks of chests, and plundering cash, property and goldmohurs, valued at rupees 917-8-6; 2nd count, against prisoners Nos. 18, 19, 20, 21, 22 and 23, being accessaries before and after the fact of the above crime; and 3rd count, against prisoners Nos. 18, 19, 20, 21, 22, 23 and 24, knowingly receiving and possessing property obtained by the above dacoity.

CRIME ESTABLISHED.—Against Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23, dacoity attended with wounding and knowingly receiving property obtained thereby; No. 15, dacoity attended with wounding, and against No. 24, knowingly receiving property obtained by dacoity.

Committing Officer, Mr. A. Abercrombie, assistant, exercising the powers of joint magistrate at Jumalpore.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 24th January 1852.

Remarks by the sessions judge.—"The prosecutor's house was attacked about midnight of the 2nd September, by dacoits who had come over from the districts of Bogra and Pubna, and two of his servants wounded, one of them slightly, and the other received a wound on the top of the head, which left a scar about 3 inches in length, and property to the value of rupees 917-8-6 carried off. The prosecutor, a trader, was at some distance from his house, about to take a boat to Serajgunj, but was informed of it before daylight, and gave immediate information to a jemadar, who happened to be near, and also at the thanna. No one was recognized, but suspicion having been attached to prisoner No. 12, he was apprehended and confessed having committed the crime, the other prisoners, and Nos. 12,

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13, 14, 15, 16 and 17, confessed in the Mofussil and before the assistant having committed the dacoity, and except No. 15, either gave up part of the plundered property, or stated to whom it had been sold, by whom it was given up. Nos. 18, 19, 20, 21, 22 and 23 confessed in the Mofussil and gave up part of the property themselves, or stated to whom it had been sold or pledged, from whom it was obtained. No. 24 also admitted having purchased part of the property from No. 12's brother, and gave it up after it had been melted down. Before the assistant, Nos. 18, 19, 20, 21, 22 and 23 stated that they had been falsely implicated by the other prisoners, and that the confessions have been extorted by the ill-treatment by the police. No. 24, that the piece of silver he gave up had been made of ornaments belonging to him and melted down after it had been demanded by the jemadar, who had beat him. Before this court, Nos. 12, 13, 14, 15, 16, 17, 18 and 21 pleaded ill-treatment by the police; No. 19, that the darogah had consulted with Andareea and Alee Mahomed and tied up two bundles of property to put into his premises, and enmity with Andareea, who, it appears, had about five years ago, taken under his protection one of, No. 18, his uncle's, wives. No. 20, ill-treatment of the police, *alibi* and claimed the property. No. 22, good character. No. 23, *alibi* and enmity with Nos. 12 and 14. No. 24, that the darogah beat him to give up the property, on which he melted down his own silver and gave it. This prisoner had pleaded he had been beaten by the jemadar before the assistant, and the object in denying that he had purchased certain articles from No. 12's brother, is for the purpose of aiding that person in his defence, thus showing he knew how it had been obtained. His defence, as well as that of all the prisoners, having failed, I convicted Nos. 12, 13, 18 and 19 of dacoity attended with wounding, and knowingly receiving property obtained thereby, and sentenced them to fourteen (14) years' imprisonment, as Nos. 18 and 19 had before been convicted of dacoity, No. 12, twice of theft, and No. 13 of theft, while a jail burkundauz at Bogra; Nos. 14, 15, 16, 17, 20, 21, 22 and 23, of dacoity attended with wounding, and No. 24 of knowingly receiving property obtained by dacoity."

Sentence passed by the lower court.—Nos. 12, 13, 18 and 19, each to be imprisoned for fourteen (14) years with labor in irons; Nos. 14, 15, 16, 17, 20, 21, 22 and 23, each to be imprisoned for seven (7) years with labor in irons, and No. 24, for five (5) years with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The judge's remarks do not give the particulars which led to the capture of this gang. They are of importance in forming a just estimate of the subsequent proceedings. The

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darogah had been, it appears, for some time unsuccessful in getting a clue to the discovery of the offenders, when the prosecutor brought to him one Shibnath Bhoomik, an inhabitant of pergunnah Borobazoo in Mymensing, as having information to give. This person deposed, that one Andareea of his village, a notorious dacoit, with Meena, borrowed his boat on pretence of going to buy bamboos at Alee Mahomed's at Kamarpara, but from Meena he heard that he had taken silver ornaments there for sale, and that Gureeboollah had seen the ornaments taken there. The clue given by Shibnath turned out to be false and an attempt made (most probably by him) further to implicate Andareea by producing some property from near his house, being frustrated by the honesty of the prosecutor in not identifying it, Shibnath ran off. Nevertheless the darogah went to Kamarpara and examined Alee Mahomed. He denied that any ornaments had been brought to him. No person of the name of Gureeboollah (cited as it were as a witness by Shibnath) was found to reside in that village, but in an adjoining village there was a person of that name, who had lately been released from the Bogra jail. The darogah sent for this man, and he eventually confessed having himself been concerned in the dacoity and named almost all his accomplices. Those named were all residents of the Jheenay in the Bogra and Pubna districts. They were, by the exertions of the police, secured and induced to give up their admitted shares of the plunder, and those portions which were not melted down, were identified by the prosecutor. To the darogah twelve of the prisoners made full and circumstantial confessions of all the particulars of the expedition, two of them (Madaree and Koosha,) however, stating that they remained in charge of the boat which conveyed the party while the others committed the dacoity. The truth of this last assertion is confirmed by other confessions and by the probability of the fact, Madaree being very old (75) and Kooshee very young (17 years' old). The first six prisoners repeated their confessions with some slight reservation to the joint magistrate of Jumalpore. The confessions before the darogah and before the joint magistrate have been proved to have been given voluntarily. The persons, to whom portions of the plunder had been sold, were sent in by the darogah as witnesses, but one of them, the prisoner No. 24, Eroo, (Yaroo,) for some reason not asserted in the proceedings, was put upon his trial for receiving part of the plundered property. The sessions judge has convicted the first twelve prisoners of dacoity with wounding, and except No. 15, of knowingly receiving a portion of the plundered property; and the last prisoner Eroo of the latter crime only.

"All the prisoners have appealed, mostly urging the same pleas that they did in the sessions court, but which, as stated by

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the judge, failed to be proved. Shamutoollah further states, that the witnesses to the property, asserted to be part of the booty found in his possession being his own, were not sent for. On reference, however, to the papers, I find, that the only witnesses cited by him were to an *alibi*, and they were summoned.

"I concur in the finding against all the prisoners, except Koosha No. 15, Madaree No. 20 and Eroo No. 24, the two first of whom as having remained in the boat are only guilty of aiding and abetting in the dacoity, Madaree is also guilty of having had in his possession portions of the plundered property.

"The statement of Eroo to the darogah does not amount to a confession of guilt. In it he admits that he bought the property from the prisoner Gureeboollah, but not knowing that it was stolen property.

"The admission that he bought it from Gureeboollah is stated by one of the subscribing witnesses to have been extorted by threats. Another knows nothing about it, and one only states that it was given voluntarily. To the magistrate this prisoner asserted that the property was his own. He is, in my opinion, entitled to an acquittal. Orders will, therefore, issue for his release. I see no reason to interfere in favor of the other prisoners. On the contrary, I consider the sentences passed, very lenient. The leaders are old offenders, the party evinced great enterprize and perseverance in proceeding so many days' journey on the expedition, and then waiting a day or two more until a police boat, which they found there, was out of the way. The prosecutor's watchman received a considerable wound from a sword on the head, and he and another person various bruises, showing that the gang were determined to proceed to any extremities against opposers.

"Those of the culprits, who had before been convicted of dacoity and theft, might have been appropriately recommended for transportation for life, and the rest sentenced to fourteen (14) years' imprisonment.

"The darogah who made the inquiry into this case, has shown much skill and perseverance as a police officer, and his reports are particularly candid and fair."

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

GOVERNMENT

versus

MUNGOLA RAUR.*

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Case of MUNGOLA RAUR.

A woman was convicted of the unauthorized taking of ornaments from the corpse of a young girl, found floating in a tank, and of endeavouring at the same time to hide the corpse. The sessions court sentenced her upon this conviction, to imprisonment for seven years' with labor suited to her sex. There was no good proof that there were any marks of violence on the corpse. The zillah law officer gave a *futwa* of theft, as applicable to the taking of the ornaments. It appeared doubtful, upon a *futwa* taken from the law officer of the court, whether the more proper designation would not, according to the Mahomedan law, have been the culpable appropriation of trove property; without entering into niceties on this point, the court thought that, under the circumstances, the punishment awarded for the offence generally had been excessive, and reduced it to imprisonment, with suitable labor, for one year.

CRIME CHARGED.—1st count, wilful murder of prosecutor's daughter-in-law, Bhubbotareenee Chookree, aged about eight years, for the sake of her ornaments; and 2nd count, theft of ornaments, the property of the prosecutor, from the person of the deceased, valued at rupees 12.

CRIME ESTABLISHED.—Theft of ornaments from the person of Bhubbotareenee Chokree, deceased.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 3rd January 1852.

Remarks by the additional sessions judge.—"The deceased child Bhubbotareenee was married, and her father-in-law had given her ornaments, but she was only seven or eight years old, and lived with her father in the village of Setee, and about 1¼ beegah from him lived the prisoners in the same house, Mungola being the mistress of Hurree Byragee (No. 2, acquitted, and reported in statement No. 8 of this month). The deceased child occasionally went to their house to play. On the 3rd of October last, the deceased child was missing, and could not be found; but on the following day, her dead body was discovered in a ditch near her father's house, and as there was *pana*, (weed) on it, it was supposed, that it had been carried there from a pond, which is close to the house of the prisoners, and which was covered with such weed. Information was given to the darogah, and the prisoners were apprehended. On the 6th of October, one Habo stated before the police, that Mungola had given to Hurree some ornaments to sell, such as were on the person of the deceased child, and after that statement was made, the prisoners altered their stories. Mungola confessed that she saw the dead body in the tank and took the ornaments from it, and hid the body

* Hurree Byragee, another prisoner implicated in this case, was acquitted by the sessions court.

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in the water, and afterwards before morning, carried it to the ditch where it was found. She at first hid the ornaments, but afterwards gave them to Hurree to sell. And Hurree stated, that he received the ornaments and sold them. Habo and Hurree were both at the house of Mungola when she took the ornaments from the body, and they went off together to sell them. Habo gave evidence on the trial to this effect, and Hurree stated it in his deposition before the police and the magistrate. The ornaments have not been recovered, and they cannot be proved to have been those which the child wore, except by the confession of Mungola, and the circumstances of the case. It is shown by the statements of both the prisoners that Hurree did not know of the death of the child when he received the ornaments for sale, and the same may be inferred from the deposition of Habo, and it does not appear that the prisoners had cohabited for more than one or two months, so that Mungola might have had ornaments unknown to Hurree. According to the Mofussil *sooruthal*, the neck of the child was broken, but of all the witnesses, the father of the child alone touched the body. Two witnesses say that they saw no marks on the neck. One says, that it was swollen, and another says that it was crooked, but this is not sufficient to prove that the child was not drowned. It does not appear when the body was sent to the station, probably it was late on the 4th of October, the 5th was a Sunday, and on the 8th, the medical officer reported, in reply to a letter, dated the 6th October, that the body was decomposed, and that it was quite impossible to form an opinion as to the cause of death. I cannot find out from the record, when the body was received in the hospital, or when it was examined; but as the village of Setee is only about four *coss* from Alipore, the body ought to have arrived in time to have been examined; and but for the neglect, the prisoner No. 1 at least might have been convicted of murder. There is no satisfactory evidence to show that the child did not die from drowning, and as she could not swim, and the sides of the pond were steep, she might very possibly have been drowned. As there is no evidence that the ornaments which were sold, were those of the deceased child, and it cannot be shown that she was murdered, the prisoner can be convicted only on her own confession, which must be taken entire."

Sentence passed by the lower court.—Seven (7) years' imprisonment with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"There is some doubt on a *futwa*, which has been taken in this case from the law officer of the court, whether the act, which is proved against the prisoner, is to be correctly classed according to the Mahomedan law as theft, or as culpable appropriation of trove property. (See case of Sheikh Roopun and

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others, Nizumut Adawlut Reports, vol. I. pages 308 and 309.) The zillah law officer has given a *futwa* of theft. Without going into niceties on this point, it appears to me that the punishment of seven (7) years' imprisonment for the unauthorized taking of the ornaments from the corpse, floating in the tank, and the endeavouring at the same time to hide the corpse, on *which there is no good proof that there were marks of violence* is excessive. I reduce the sentence to imprisonment for one (1) year, from the date of the sentence of the additional sessions judge, with labour suited to the prisoner's sex.

"The additional sessions judge will call for, and submit a report on the subject of the delay animadverted upon by him, in sending in the corpse for examination by the medical officer."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

KRISTODASS KYBURTO.

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A prisoner admitting that dacoity is his profession, and that he has been concerned in thirty dacoities with a certain gang, in one dacoity with another, convicted of having belonged to a gang of dacoits, and sentenced to imprisonment in transportation for life, under Act XXIV. of 1843.

CRIME CHARGED.—Having belonged to a gang of dacoits, within the meaning of Act XXIV. of 1843, Section I.

Committing Officer, Mr. S. Wauchope, magistrate of Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 8th March 1852.

Remarks by the additional sessions judge.—"The prisoner says he is about thirty-six years of age, and that may be his age, he writes a good hand and appears an intelligent man; he pleaded 'guilty'. On the 17th of October last, he acknowledged before the magistrate, that he was guilty of the crime with which he is now charged. An approver, called Sindo Mytee, deposed that he and the prisoner belonged to the same gang of dacoits, of which Ram Thakoor was the leader, and he mentioned two dacoities at which they had both been present. The prisoner said that he had no defence to make, and again confessed his crime and said he had been at the two dacoities which the approver had mentioned, the records of which are herewith forwarded. I propose that the prisoner be sentenced to imprisonment for life, in transportation beyond sea, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner in this case is one of Ram Thakoor's gang, noticed at page 982 of the Nizamut Adawlut Reports for July 1851. One prisoner was at that time convicted and sentenced to imprisonment in transportation for life under Act XXIV. of 1843, (presiding judge Mr. Dunbar.) Others of the gang were

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similarly convicted and sentenced by Sir Robert Barlow on the 16th and 17th February last. The prisoner has before the magistrate and sessions judge recorded his profession as that of dacoity. In his confession to the magistrate, he has admitted having been concerned in thirty dacoities with Ram Thakoor's gang, and in one dacoity with another gang, and has described the particulars of each very circumstantially.

"I concur in the conviction of the prisoner and in the sentence proposed by the additional sessions judge."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

CHAND KHAN (No. 21), DILSHER KHAN (No. 22), TOOLUF KHAN (No. 23) AND UMRIT SAHOO (No. 24).

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Case of CHAND KHAN and others.

The conviction of the prisoner by the sessions judge, upon a charge of perjury, set aside by the Nizamut Adawlut, on the ground that there was no sufficient proof of the falsity of the matter sworn to by the prisoners.

CRIME CHARGED.—Prisoner No. 21, 1st count, perjury, in having, on the 28th February and 18th October 1851, deposed, under a solemn declaration taken instead of an oath, before the collector of zillah Monghyr, that he paid from a contribution from Pirthee Gope and others rupees 25, as a bribe to Jewala Sahoy, commissioner of sale, for taking care of the property attached, and for striking off the case instituted by Woolaet Alee *versus* Trf Khan, Pirthee Gope and others, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case; 2nd count, subornation of perjury in causing prisoners Nos. 22 and 23 to commit perjury; 3rd count, false complaint; 4th count, uttering a forged letter in a court. Prisoners Nos. 22 and 23, 1st count, perjury, in having on the 25th September 1851, deposed, under a solemn declaration taken instead of an oath, before the collector of Monghyr (being induced by prisoner No. 21) that Pirthee Gope and Poorun Gope told Umrit Sahoo, prisoner No. 24, to write a letter in their favor to prisoner No. 21, that they (the said Poorun and Pirthee) did not send the *mookhtarnama* to Goordyal Singh and Sheoram Singh, with the seal of the cazee, and the matter of giving rupees 25, by a contribution to Jewala Sahoy, commissioner of sale, was true, and he, Umrit Sahoo, prisoner No. 24, accordingly wrote the letter, which was attested and subscribed by them (prisoners Nos. 22 and 23), such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; 2nd count, aiding and abetting prisoner No. 21 in the 3rd and 4th counts; and prisoner No. 24, 1st count, perjury, in having, on the 13th

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October 1851, deposed, under a solemn declaration taken instead of an oath, before the collector of Monghyr, that at the requisition of Pirthee Gope and Poorun, he wrote the letter produced in court to Chand Khan, prisoner No. 21; that they did not send the *mookhtarnama* with the seal of the cazee; and that the matter of giving rupees 25 to Jewala Sahoy, commissioner of sale, was true, and that he delivered the letter to Pirthee Gope, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; 2nd count, writing a forged letter.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. G. G. Balfour, magistrate of Monghyr.

Tried before Mr. Francis Lowth, sessions judge of Bhaugulpore, on the 16th January 1852.

Remarks by the sessions judge.—"The prisoners pleaded 'not guilty' to the several charges preferred against them.

"It was clearly proved in evidence, that the first-named prisoner, Chand Khan had, on the 25th February 1851, preferred, by petition to the collector of Monghyr, a complaint, charging Jewala Sahoy, witness No. 1, then officiating in the capacity of native commissioner of pergunnah Furkeeah, with having accepted a bribe of rupees 25, and that he deposed, on the 28th idem, to the same effect on oath, well knowing such deposition to be false; that he also induced the other prisoners, Dilsher Khan and Tooluf Khan to give false evidence to the same effect, and in support of his complaint, and that he uttered in the same matter a forged document, purporting to be a letter to his address and written at the request of Pirthee Gope, witness No. 8, and another absent party, but which had been fraudulently prepared by the prisoner Umrit Sahoo. The several charges preferred against the other prisoners were also clearly established by the evidence of several trustworthy witnesses, from whose depositions it appeared that the sole object of the parties, concerned in this unprincipled transaction, was to obtain the release of some property attached for the recovery of some rents, and the necessity for the sale of which the native commissioner had represented to the collector.

"The prisoners entered into a lengthy defence, recapitulating the whole of their statements before the lower court, which they maintained were correct, denying the charge preferred, and declaring that the case had been brought against them out of malice and in order to screen the native commissioner from punishment, and was supported by the evidence of parties, who had been tutored to give testimony against them, in order to save themselves from the penalty of having contributed a portion of the bribe paid.

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"Several witnesses were cited by the prisoners to prove the above facts and speak to their character, but after the examination of one party, and on the court proceeding to that of a second and the only other witness present for the defence, the prisoners refused to examine him, and requested, as none of their witnesses would appear, that the trial might be proceeded with and a verdict taken on the evidence already before the court.

"The jury accordingly, with my concurrence, pronounced the prisoners 'guilty' of the charges preferred against them; the prisoner Chand Khan being proved to have taken the most active part in this unprincipled transaction, enhanced punishment was awarded him."

Sentence passed by the lower court.—No. 21, four (4) years' imprisonment with labor without irons. Nos. 22, 23 and 24, each to three (3) years' imprisonment without irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.—"To elucidate this case, it is necessary to give a brief summary of it. It appeared in evidence that the prisoner Chand Khan brought a charge of bribery against the witness Jewala Sahoy, who was acting as commissioner for the sale of distrained property, under Act I. of 1839, and supported it by the evidence of two witnesses.

"The accused denied the charge and adduced evidence to prove that Chand Khan had conspired with Asghur Hossein and others to accuse him falsely. He alleged that Chand Khan had been tampering with Asghur Hossein, who held the substantive appointment of commissioner, and who was then under suspension, to get his attached property released, and that he preferred this false accusation at the instigation of Asghur Hossein, with the double object of getting his own property released, and of effecting Asghur Hossein's restoration to office. The prisoner Chand Khan had stated in his deposition that three *ryots*, the witnesses Bhaloo Gope, Pirthee Gope and Prem Gope, deceased, whose property had also been attached, had contributed to raise the amount of the bribe. The two first-named persons on the 1st of July, or more than *four months after the date of Chand Khan's complaint*, petitioned the collector, through a duly constituted *mookhtar*, Goordial Singh, to the effect that Chand Khan had falsely used their names and that they have *not* contributed any *portion* of the bribe. To refute this denial Chand Khan produced a letter to his address, purporting to bear the signatures of Bhaloo Gope and Pirthee Gope, in which they stated that they had *not* sent the power of attorney authorizing the *mookhtar*, Goordial Singh, to petition the collector and *had* contributed a quota of the sum given as a bribe. They denied on oath that they had written the letter; on which Chand Khan cited the prisoners Nos. 22, 23 and 24 to prove that they *had* written it. Nos. 22 and 23 deposed to their

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attesting and subscribing the letter, and No. 24 to his having written it at the solicitation of Bhaloo, Pirthee Gope and Prem Gope, deceased. The collector, disbelieving the evidence for the prosecution, dismissed the complaint, and made over the prisoners to the magistrate on a charge of forgery and perjury, who committed them to the sessions court.

"The sessions judge convicts the prisoners of perjury; the acts charged are distinct. The point on which Chand Khan is stated to have perjured himself is, that he falsely and maliciously swore to having given a bribe of rupees 25 to Jewala Sahoy. He has throughout adhered to this statement: the conviction of perjury is based on the evidence of three witnesses, Mosahib Rae, Ruhman Buksh and Doorgai, who, by their own showing, were privy to the conspiracy. The latter states that Chand Khan told him he had brought a false accusation against Jewala Sahoy, and the two former affirm that they were present when Asghur Hossein counselled Chand Khan to prefer the charge. It is not credible that Chand Khan would make an admission of his guilt to a person like Doorgai, who is neither a friend nor relation, but a hanger on about the courts, while it is still less reconcilable with probability that Asghur Hossein and Chand Khan would plot a foul conspiracy in the presence of Mosahib Rae, a relation of Obiram Chowdry, who is unfriendly to Chand Khan, and Ruhman Buksh, a grass-seller, who says he came to Asghur Hossein's house to *realize a small debt* owing to him for *grass sold*. Whether the charge of bribery be true or not, the evidence which has been brought to falsify it, is certainly most worthless, and the conviction of the prisoner cannot stand.

"The evidence of Obiram Chowdry, Adawlut Khan and Danish is inadmissible, as it merely goes to show that Mosahib Rae had told them of the conspiracy which Chand Khan and Asghur had formed, and should not have been recorded.

"The perjury of the other prisoners consists in their deposing to the witnesses Bhaloo Gope and Pirthee Gope causing the letter above-mentioned to be written and sent to Chand Khan. The finding of perjury against them rests solely on the evidence of Bhaloo Gope and Pirthee Gope, who are prejudiced by the perjury. The fact of their volunteering their evidence on behalf of Jewala Sahoy, four months after the charge had been preferred, though it had been preferred to benefit them, is most suspicious, and detracts greatly from the value of their testimony. Perjury cannot be legally charged and assigned, without showing, with convincing certainty, the falsity of the matter sworn to; there is no such proof in this case; there has been hard swearing on both sides, and there is nothing to show which statement is true, and which false. I direct the immediate release of the prisoners."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOMASHTA OF THE HOUSE OF GOPAL CHUND AND KUNHYEA LAL

versus

PUREEAG.

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Case of PUREEAG.

The prisoner, accused of embezzlement, acquitted by the Nizamut Adawlut, in concurrence with the sessions judge, in dissent from the *futwa* of the law officer.

CRIME CHARGED.—1st count, embezzlement of Co.'s rupees 608-12-6, the property of his master entrusted to the prisoner as servant; and 2nd count, theft of the same sum.

Committing Officer, Mr. W. T. Tucker, officiating magistrate of Patna.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 9th March 1852.

Remarks by the sessions judge.—"The reason of this reference is a difference of opinion between myself and the law officer, who considers the crime charged proved against the prisoner, while I am not satisfied with the evidence for reasons presently to be stated.

"The charge in this case was brought forward in the magistrate's court by the prosecutor, a gomashta, acting as agent for Gopal Chund, under a power of attorney. In his evidence in this court the prosecutor, acting in that capacity by written permission or authority of Gopal Chund and Kunhyea Lal, the members of the firm of which he is the gomashta, deposed that on the 12th December at eight o'clock in the evening, the sum of rupees 608-12-6 was given by him, according to order of his master Gopal Chund, to the prisoner to take to the *kotee* or banking house of Ajoodhea Pershad, Ramjean Lal, with instructions to receive from it a *hoondee*, for the purchase of which a contract had been previously arranged through the witnesses Gopal and Junwur Dos, brokers. As he returned not, search was made for him after an hour or two in the banking house through the witness Mudhoo. Balgovind and Sheoraj gave testimony that they were both sleeping at the said banking house about eleven o'clock at night on the 12th, when they were disturbed by one unknown asking if the money for the *hoondee* had been received. They supported the statement of the prosecutor relative to the *hoondee* having been previously contracted for, as did the two *dallals* above-named.

"The witnesses to the payment of the money to the prisoner are four *peadas* employed by the firm to which prosecutor is gomashta.

"The defence which the prisoner set up was that he had been employed in the service of the firm, and was discharged without

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payment of wages due to him when he was beaten for demanding payment; he laid two complaints before the magistrate, one of assault, the other of non-payment of wages, and that in order to defeat and get rid of these unpleasant complaints, the prosecutor had been instructed to accuse him falsely of embezzling money entrusted to him by the firm.

"The fact of his having complained to the magistrate before the firm caused any charge whatever to be lodged, whether at the thanna or in the magistrate's court against him, is proved by the records of the magistrate's court, and the evidence of the mohurir of the police thanna where information simply of the occurrence was recorded in the diary late in the evening of the 13th December, on which day the prisoner had already laid his two complaints before the magistrate.

"It was not till the 16th that a formal charge was brought forward after the magistrate had summoned the witnesses of prisoner as complainant.

"There are many improbabilities in the statement of the prosecutor. The prisoner, it is said, had been employed as a *peada* or messenger to run errands, collect debts, &c., only 27 days, when he was entrusted with so large a sum of money, and it does not appear on any sufficient security or assurance as to his honesty. He had been employed once before, indeed, on the recommendation of a mason, who had worked for the firm; but he had left the service after six weeks of his own accord.

"There were several other *peadas*, the witnesses in the case, who might have been employed instead, or in conjunction with the prisoner. That being the case, the lateness of the hour, eight o'clock in the evening, awakens suspicion; and if the witnesses Balgovind and Sheoraj are to be believed, it was still later, as they were not awakened till eleven o'clock at night.

"It is improbable, too, that no letter or written memorandum of any sort should have been sent with the money, so much so that the witness Gholam Hossein was thrown off his guard by a question of the court, and replied first that a letter had been given to the prisoner, but the prosecutor breaking in with an exclamation caused him to correct himself on this point.

"The number of the witnesses produced to each separate fact is also in my mind suspicious. There were two brokers employed to purchase the *hoondee*, two gomashtas awakened at night and five *peadas* to witness the payment of the money to the prisoner and the despatch of Mudhoo, one of their number, to make inquiries after him. Of these one man named Boolakee entered in the calendar, did not make his appearance.

"The most extraordinary facts, however, connected with the case, and they are indisputable, are, that no charge was preferred at the thanna that very night, and that the next night when inti-

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mation was given, it was not accompanied by the requisite petition to enable the police to go in pursuit of the depredator. It was not then known, be it observed, to the prosecutor, or his employers, that he had preferred charges against his masters.

"These circumstances, giving due weight to the reluctance of respectable natives to appear and give evidence in a court of justice, lead me to account for the gomashta being put forward to prosecute by the dread in the minds of his employers of the penalties for false swearing in the event of detection."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"I concur with the sessions judge in the release of the prisoner. It is true that the prosecutor's servants depose that the prisoner was entrusted with the amount to procure a *hoondee* from the *kootee* of Ramjean Lal, but there are circumstances on the record which give the case a very doubtful complexion. If the evidence for the prosecution is to be credited, it appears that in consequence of the protracted absence of the prisoner, prosecutor and his witnesses immediately suspected the prisoner, and set on foot an inquiry, proceeded to his house and found that he was not there. No charge was, however, laid either that night or the next day till a very late hour, about 7 or 8 P. M. The amount carried off was large. The prisoner, who had only been a servant for twenty-seven days, had absconded, and yet, as is shown by the deposition of Beharee Lal, the mohurir of the thanna, no information was given there till the 13th December at night; and even then no application was made for inquiry in due form upon oath. Omrao Singh, the *mookhtar* of Gopal Chund, who gave the information, refused, though twice called upon on the night of the 13th and also on 14th December, to depose to the charge, but on the last date the circumstance was noted in the thanna book.

"The prisoner had presented two petitions against prosecutor's master, Gopal Chund, and on the 13th December the magistrate ordered subpœnas to be issued for the attendance of prisoner's witnesses. The charge now brought appears to be a counterplaint.

"The circumstantial evidence in the case merely proves that the brokers negotiated a *hoondee* between Gopal Chund and the house of Ramjean. This is quite probable, but it by no means proves that the prisoner was entrusted with the money to pay the amount of that particular *hoondee*.

"The prisoner is acquitted and released."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

MUDOOSOODUN CHOWDRY

versus

BAIRUB DOME CHOWKEEDAR (No. 18), KALI DOME CHOWKEEDAR (No. 19).

CRIME CHARGED.—1st count, prisoners Nos. 18 and 19, burglary in the house of the prosecutor, in which burglary property to the value of rupees 26-15-0, was stolen by them on the night of the 15th October 1851, corresponding with the 30th Assin 1258 B. S.; 2nd count, receiving and possessing property, knowing the same to have been acquired in the above burglary.

Committing Officer, Mr. C. H. Campbell, officiating joint magistrate of Bancoorah.

Tried before Mr. Pierce Taylor, sessions judge of West Burdwan, on the 13th March 1852.

Remarks by the sessions judge.—"I refer the same for orders, because the law officer, Moulvee Ikramool Huq, appears to me to have taken an erroneous view of the circumstances of the case in his *futwa.*

"These appear, from the depositions of the plaintiff Mudoosoodun Chowdry and the most trustworthy of the witnesses for the prosecution, to have been as follows:

"A burglary was committed in the plaintiff's house, at Soonamookhy, on the night of the 30th Assin 1258 B. S., corresponding with the 15th October 1851 A. D., in which brass vessels, &c., valued at rupees 26-15-0, were carried off. Bogul, the chowkeedar of the *mohullah* (not summoned by the magistrate), in consultation with the plaintiff, next morning named the prisoners (among other low caste persons who had watched the preparations for the plaintiff's marriage, at the neighbouring village of Khyrbunnee, and were in the habit of visiting his residence and seeing his property), as the possible burglars, and then went to give notice to the thannadar.

"All the officials happened to be absent on that day, but Bogul appears to have found a burkundauz (probably Nuzuf Alee, No. 1, but that does not distinctly appear), who, with himself and one Nubeen Sirdar (not summoned by the magistrate), went off to the villages of Khyrbunnee and Bungram, to look for the burglars.

"On the morning of the next day (1st Kartick), plaintiff went to the thanna and gave his deposition and a list of the property carried off, to the mohurir, who promised immediate investigation, but sent him home at that time. Shortly after-

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Case of BAIRUB DOME CHOWKEEDAR and another.

wards, however, he received a message to say, that the burkundauz had summoned the mohurir to Bungram, where news of the lost property had been obtained, and that his presence was requisite at the investigation about to take place there.

"The plaintiff, after a leisurely consumption of his *bhojun*, followed the mohurir to Bungram, where he found that the prisoners had confessed, and that his property, which he duly recognized, had been dug up by them in the presence of the authorities out of Bairub Dome's *bygun* garden.

"The witnesses to the *sooruthal*, *viz.*, Bakaram Bagdee (No. 11) and Haradhun Gowalla (No. 3), (examined instead of Ramcoomar Surma (No. 2,) absent), sufficiently prove the existence of a hole in the wall of plaintiff's house, on the morning of the 31st Assin, and fracture of the lock of a chest therein contained.

"There is no direct evidence of the commission of the burglary by the prisoners, beyond their so-called Mofussil confessions above alluded to, deposed to by Romakanth Bhooi (No. 4), Kenaram Bhooi (No. 5), Juggernath Sheet (No. 6), in which they stated that the deed had actually been done by a certain Seboo Dome, with a *sind katee*, in the presence of one Nuddea Dome and the prisoner Kali, while the prisoner Bairub waited for them outside the town of Soonamookhy.

"The court will observe that the above-named Seboo and Nuddea Domes were comprehended in the list of suspected persons, enumerated to the mohurir by plaintiff, when he gave his deposition at the thanna, and that the houses of all the said persons appear to have been searched without result. The witnesses Nuzuf Alee (No. 1), and Ramcoomar Surma (No. 2), were not examined, the former being in zillah Behar, and the latter *non inventus* at the time of trial, but the evidence of those stated below* clearly proves that the eight articles of property, recovered by the police, and valued at about rupees 10-8-0, were dug up out of a *bygun* garden in Bungram by the prisoners in person, who had previously pointed out that locality, and that they are the property of the prosecutor, who recognized them shortly after they were found.

"The witnesses for the prosecution stated below,† all more or less, declare the confessions to have been the result of violent

To finding Property.

* Ramakanth Bhooi (No. 4), Gooroochurn Kulleh (No. 7), | Deonoonath Singh (No. 8), Becharam Karuck (No. 10).

To Identity.

Haradhun Gowalla (No. 3), | Bakaram Bagdee (No. 11).

† Ramakanth Bhooi (No. 4), Kenaram Bhooi (No. 5), Juggernath Sheet (No. 6), Hurree Pal (No. 9), Becharam Karuck (No. 10).

treatment on the part of the police, about which none of them said anything when examined by the magistrate, (except No. 4), and he only in reply to a question put to him by that officer. Some only say they heard of it* from Becharam Karuck (No. 10) and others, one that he heard it going on, and saw the prisoner Bairub in a weak state from it,† and only one that he had personally seen it.‡

"The depositions of Nos. 9 and 10 are discordant with each other, and that of the latter discrepant in itself, while the plaintiff showed, by a question put by him to Becharam Karuck (No. 10), that he either knew, or suspected him to be a *mahajun* or fence.

"The above witnesses have undoubtedly been tampered with, since the foujdaree trial, and their story is a palpable invention.

"Both prisoners deny that they confessed, and that they pointed out the spot in which the property was found.

"The prisoner Kali (No. 19) denies that he took up the property from the *bygun* garden with his own hands, and the prisoner Bairub (No. 18), that he took up the whole, or any of it, until he was forced to dig for it, by Nubeen Sirdar.

"Both affirm that they were beaten by the said Nubeen, and one Tarnee Mookerjea, a person accustomed to hang about the thanna.

"Neither of them, however, says that the property belongs to other than the plaintiff.

"The court will not fail to remark, that the witnesses for the prosecution, Hareepal (No. 9), and Becharam Karuck (No. 10), were named to the magistrate among those of the defence, by the prisoners, and that it was from them that the others, who mention violence, got their information. From this it is clear to my perception, that Hureepal and Becharam were persons amicably known to the prisoner before the occurrence of the burglary, and who only wanted to know what to say, to be ready to say it for them. The necessary instructions have since been supplied in some way, and the office has also been given to the other friendly witnesses above-named.

"Sadhoochurn Kulleh (No. 13), is the only other witness of the defence, who deposes to having seen violence committed upon the prisoners. The object of Roopkaraur (No. 14), Kanie Bhooi (No. 15), Anund Rana (No. 16), and Gopee Kulloo (No. 17), was to show that the prisoners were on their beat all night, but I do not consider it attained. One or two of the witnesses of the prosecution have been tutored to support their state-

* Nos. (4), (5) and (6).
† Becharam Karuck (No. 10).
‡ Huree Pal (No. 9).

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ments as far as one and a half *puhurs* of the night, but they said the contrary before the magistrate.

"The *fatwa* of the law officer declares the apprehension of the prisoners baseless, their confessions the result of violence, and the evidence of their having pointed out, and personally dug up the property, not trustworthy in consequence, and acquits them on both counts.

"I agree that the first count cannot be supported, because there is no evidence that brings the actual commission of the burglary, in the house of the plaintiff, home to the prisoners, while there is strong reason to believe that the confessions, which only show them to have been accessary, were the result of some inducement more drastic than that of words. The evidence of the particular description of violence, given by the witnesses of the prosecution and defence, is totally unworthy of credit, and I accord it no weight whatever, but I do not see what mere verbal persuasion could have induced the prisoners to act as they did, when in the custody of the police, while I am conscious that illegal violence, generally successful with actual criminals in this country, is but too often resorted to by the native officials.

"The 2nd count appears to me to be fully sustained by the evidence mentioned in my tenth paragraph, and I would therefore convict the prisoners, in terms thereof, and sentence them to three (3) years' imprisonment each, with labor in irons.

"Had they not been chowkeedars, I should have considered two (2) years' each, with labor and irons, a sufficient punishment, but that fact has caused me to recommend the heavier penalty."

Remarks by the Nizamut Adawlut.—Present: Mr. A. J. M. Mills.)—"Independent of the Mofussil confessions, which I reject as unduly obtained, it is established upon clear and satisfactory evidence, that the prisoners themselves pointed out to the mohurir of the thanna the place where the stolen articles were buried, and themselves dug them up.

"The prisoners had made admissions before the mohurir's arrival, and it is not even alleged that he had any hand in ill-treating them, or in inducing them to confess. This circumstance induces me to give readier and greater credence to the evidence, touching the discovery of the property. The declaration of the prisoners, which was made cotemporaneously with the production of the property, that they had obtained it feloniously, is admissible in evidence as explaining the act of delivery, and raises a strong presumption that they were present and concerned in the robbery. I convict them therefore of burglary as laid in the first count, and sentence them each to five (5) years' imprisonment with labor and in irons."

PRESENT:

J. R. COLVIN, Esq., *Judge*.

GOVERNMENT

versus

REETUN SINGH.

1852.

March 31.

Case of REETUN SINGH.

Acquittal by the Nizamut Adawlut of a prisoner convicted by the sessions court of affray with wounding.

Where a magistrate has released certain persons, charged before him as prisoners, on the ground of there not being sufficient evidence for their commitment, and has made them witnesses on a trial, they ought not to be subsequently committed for trial on an intimation from the sessions judge.

It is for the magistrate, as committing officer, to determine on the propriety of committing any particular party.

CRIME CHARGED.—Affray attended with severely wounding Goorpershad Singh, Outar Singh, Koonja Singh and prisoner No. 3, on one side, and slightly wounding Ramtownkul Singh, on the other side.

CRIME ESTABLISHED.—Affray attended with severely wounding Goorpershad Singh, Outar Singh, Koonja Singh and prisoner No. 3, on one side, and slightly wounding Ramtownkul Singh, on the other side.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W Tayler, sessions judge of Shahabad, on the 12th December 1851.

Remarks by the sessions judge.—"This is a supplementary calendar connected with case No. 5, of the statement No. 6 for September last, in which the circumstances were fully detailed.

"The prisoner, who had at that time eluded pursuit, has been since apprehended.

"The presence and participation is established by evidence; he was himself wounded.

"His defence is merely that he was beaten, and did not beat himself.

"The *futwa* convicted the prisoner of the crime charged, and declared him liable to *seeasut*."

Sentence passed by the lower court.—To be imprisoned without irons for four (4) years from the 12th of December 1851, and to pay a fine of rupees one hundred (100), on or before the 27th day of December 1851, or in default of payment to labor until the fine be paid, or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"The prisoner's case is exactly the same as that of the three prisoners Goorpershad Singh, Outar Singh and Koonja Singh, who were acquitted by Mr. Dick's sentence of the 17th January last. It is clear, from the magistrate's proceeding of June 7th 1851, that he made all these four persons witnesses, because he thought,—whether correctly or otherwise, it is not necessary to inquire,—that there was not evidence for their commitment. Such a proceeding was entirely within his competency as a committing officer. The prisoner ought not to have been subsequently committed for trial upon an intimation from the

sessions judge; and indeed, in his proceeding of commitment of September 3rd 1851, the magistrate says that the ground of the commitment, which he then made in reference to that intimation, was merely the fact of the prisoners being wounded, though *their names had in no way been mentioned* by any witness of the adverse party.

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Case of RELTUN SINGH.

"There is nothing to distinguish, in the slightest degree, the position of this prisoner from that of the three before released.

"He is acquitted accordingly."

PRESENT:

J. R. COLVIN, Esq., *Judge.*

GOVERNMENT

versus

ABBOOL HOSSEIN (No. 3, APPELLANT) AND SHEIKH GOPAL (No. 4).

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March 31.
Case of ABBOOL HOSSEIN and another.

A case connected with a trial, disposed of as regards the prisoner No. 4, Sheikh Gopal, by his acquittal on the 11th March, see page 327. The appeal in this case was by the prisoner No. 3, Abbool Hossein. He had, however, been convicted on good evidence, supported by his own confession before the magistrate. The quarrel and attack had arisen from his intemperate violence, and there was no ground for modifying the sentence, as it affected him.

CRIME CHARGED.—1st count, wilful murder of Jangeer; 2nd count, affray attended with the culpable homicide of the said Jangeer and the wounding of Abbool Hossein and Sheikh Gopal.

CRIME ESTABLISHED.—Affray attended with culpable homicide and wounding.

Committing Officer, Baboo Jogesh Chunder Ghose, deputy magistrate of Burrisaul.

Tried before Mr. W. J. H. Money, sessions judge of Backergunge, on the 22nd December 1851.

Remarks by the sessions judge.—"The Government was prosecutor in this case.

"Prisoner No. 3, Abbool Hossein, denied the charges on which he was arraigned in this court, in the Mofussil and before the magistrate he admitted the affray, in which he and prisoner (No. 4) and the deceased Jangeer were struck. Prisoner No. 4 admitted the affray in this court, in the Mofussil and before the magistrate; expressly stating here that he had struck prisoner No. 3. From the evidence of Musst. Koonee, witness No. 1, it appeared that in the month of Bhadoon last, date not remembered, early in the morning, the prisoner No. 3, Abbool Hossein, came to her house and asked her husband, (deceased,) and her son Gopal, prisoner No. 4, to cut his (Abbool Hossein's) paddy; that on her son mentioning there was too much water in the field, Abbool Hossein went away, and returning about 12 o'clock in the day, asked her son Gopal, who was standing in front of the house, why he did not cut the paddy, and *gave him* abuse; that her son Gopal becoming angry abused Abbool Hossein, upon which her

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husband advanced to interfere, when Abbool Hossein struck him on the head with a *lattee* he had brought in his hand, her son Gopal then taking up his stick and receiving a blow on his finger; that in consequence of the blow her husband was rendered insensible and information being given first to the zemindar's cutcherry and then to the thanna, the darogah arrived in four or five days and sent her husband to Burrisaul, where he died in hospital from the effects of his wound; there was no ill-will existing between her husband and the prisoner Abbool Hossein or between any of them; deceased was about 60 years old, and though he had been indisposed, had quite recovered about ten days before the accident. This witness described the wound on the left side of the crown of the head to be about three fingers long and two fingers broad.

"Witness No. 2, Kishore Khan, deposed to the dispute between prisoner No. 3 and prisoner No. 4, on a Friday, in the month of Bhadoon last, about the paddy not being cut; to the prisoner (No. 3) Abbool Hossein giving prisoner No. 4, Gopal, a blow, which he received on his right hand finger; to the father, Jangeer, (deceased), advancing to interfere when Abbool Hossein aimed a second blow at Gopal which struck his father (Jangeer) on the head as described, and to the prisoner Gopal then striking prisoner No. 3, and wounding him on the head. The evidence of witness No. 3, Nussiroodeen was to the same purport, except that he did not observe prisoner No. 4 give any blow. Witness No. 4, Gorachand Chung and witness No. 5, Roychand Chung, deposed also to the dispute between prisoners Nos. 3 and 4; to the deceased interfering and receiving a blow on his head from 'Abbool Hossein's' *lattee*. From their statement it would also appear that two other persons had accompanied the prisoner No. 3 to the house of prisoner No. 4. Witness No. 12, Kajul Khan, chowkeedar, and witness No. 13, Bhasye Khan, deposed to their having seen the deceased with a wound on his head, and the former hearing from him that prisoner No. 3 had beaten him. The deceased deposed before the darogah to the fact of dispute between his son Gopal and prisoner No. 3, when he came out to interfere and received a blow on his head from the prisoner No. 3, which was intended for his son prisoner No. 4. The witnesses to the *sooruthal* deposed to a wound on the left side of the crown of the head of the deceased, about three fingers long and half a finger broad, as if from a *lattee*. The uncovenanted assistant surgeon deposed, that the deceased had 'a wound on the crown of the head which was about two inches 'long and fractured the skull;' that in holding a *post mortem* examination, he found the skull fractured in several places and a depression of the inner plate of the skull on the membranes of the brain; that there was likewise an extravasation of black blood

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Case of Abdool Hossein and another.

on the surface of the brain which was sufficient to account for his death. He considered the injury to have been inflicted by some blunt instrument similar to the club produced in court; it appeared that the deceased was comatose on his arrival at the station, from the effusion of blood on the brain, and died about thirteen days after his admission into the hospital, being in other respects quite healthy. The prisoners had no witnesses, but gave petitions stating that the witnesses for the prosecution were *ryots* of Caleepersaud Buttacharge, talookdar, who had a quarrel with their zemindar, the chowkeedar having sided with the talookdar in this case.

"The jury acquitted prisoner No. 4, and considered prisoner No. 3, guilty of beating and wounding the deceased from the effects of which he expired. I dissented from this verdict and considered the prisoners guilty of affray attended with culpable homicide and wounding; and sentenced them accordingly; although the offence of prisoner No. 4 was very much less in comparison with that of prisoner No. 3, I could not hold him altogether blameless but imposed a more moderate punishment."

Sentence passed by the lower court.—No. 3, to be imprisoned for three (3) years without irons, and to pay a fine of rupees fifty (50) in lieu of labor within a week, in default, to labor until the fine be paid, or the term of his sentence expire, and No. 4, to be imprisoned for six (6) months without irons, and to pay a fine of rupees fifteen (15), in lieu of labor within a week, or, in default, to labor until the fine be paid, or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"The prisoner No. 3, Abbool Hossein, has now appealed, but without saying anything which can affect the general evidence in the case, supported by his own distinct confession before the magistrate. The quarrel and attack arose from his own intemperate violence, and there is no ground for modifying his sentence.

"The appeal is rejected."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

SREEMUNTH JOHOORUJAN

versus

MANDARI (No. 3), KADIR FUQEER (No. 4), LURRA GAZEE (No. 5), TITA GAZEE (No. 6), RUJUB ALEE (No. 7), SHUFFER ALEE (No. 8) AND KAMAL (No. 9).

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Case of MANDARI and others.

The convictions of the prisoners on a charge of culpable homicide affirmed by the Nizamut Adawlut.

CRIME CHARGED 1st count, culpable homicide of Shooker Mahomed, the husband of the prosecutrix; 2nd count, accomplices in the above; 3rd count, assaulting and wounding Nazir Mahomed, Ishur Chunder and Ram Sunker; and 4th count, accomplices in the above.

CRIME ESTABLISHED.—No. 3, culpable homicide of Shooker Mahomed, and Nos. 4 to 9, accomplices in the culpable homicide of Shooker Mahomed.

Committing Officer, Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 12th January 1852.

Remarks by the sessions judge.—"The persons tried were some of them in arrears for rent. Ishur Chunder and Ram Sunker took aid from the police, and attached the property of Nazir Mahomed (witness); but were opposed, when they went to attach that of Kadir Fuqeer (No. 4), and desisted, going away, while the thanna peon stayed at the house of Nazir Mahomed. Ram Sunker was afterwards found and assaulted at the house of Tita Gazee (No. 6,) when Ishur, his son, came up, and was beaten also. The two then went to the house of Nazir Mahomed, where the peon was, and the house was attacked by the prisoners, and Shooker Mahomed was so severely assaulted by one of the party, Mandari, on the head with a bamboo, that he died that night. The prisoners pleaded *alibi* and enmity, but one of them only adduced two witnesses who did not support the defence. I have concurred with my assessors in holding Mandari guilty of culpable homicide, and the other prisoners as accomplices in the same, and have sentenced Mandari to five (5) years' imprisonment with labor, and the other prisoners to two (2) years' imprisonment with labor, commutable with a fine of rupees fifty (50) each."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.—"The prisoners have appealed. No. 6 pleads that he was at a distance from the place of occurrence, and Kamal, No. 9, that he has been charged falsely. Mandari urges that he was first struck by the deceased, and in self-defence returned the blow. The other prisoners allege that the deceased and his friends

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Case of MANDARI and others.

were the aggressors, but their respective pleas are not supported by evidence, while it is clearly and satisfactorily proved by the testimony of the witnesses for the prosecution that the prisoners forcibly resisted a legal attachment of the property of the defaulting *ryots*, then assaulted the landlord and his son, who took out the attachment, and following them to the house of the witness Nazir Mahomed, were opposed in their entrance by him, the deceased, and others, when a fight ensued, in which Shooker Mahomed was so seriously assaulted as to cause his death the same evening. The body was too decomposed to admit of a *post mortem* examination, but the deceased was in perfect health in the morning, and the presumption arising from the evidence is strong, that he died from the effect of the injuries he received. The evidence to the prisoner Mandari striking the deceased on the head with a bamboo, and to the other prisoners aiding and abetting him in the assault, is clear and consistent, and I see no reason to interfere with the conviction and sentence. The appeal is accordingly rejected."

CASES

IN THE

NIZAMUT ADAWLUT.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

NOOR ALEE (No. 2), PANJOO, ALIAS KALACHAUND SIRDAR (No. 3), FUTEECK (No. 4), USGUR MULLICK (No. 5) AND NUBBEE NEWAZ KHAN (No. 6).

1852.

April 2.

Case of NOOR ALEE and others.

The fact of the deceased's death being undoubted, although his body was not produced, the prisoners were convicted of his culpable homicide.

CRIME CHARGED.—1st count, wilful murder of Osman Khan, *alias* Alee Mahomed; 2nd count, affray attended with the culpable homicide of the said Osman Khan, *alias* Alee Mahomed, and the wounding of Panjoo, *alias* Kalachaund Sirdar.

CRIME ESTABLISHED.—Affray attended with culpable homicide and wounding.

Committing Officer, Baboo Jogesh Chunder Ghose, deputy magistrate of Backergunge.

Tried before Mr. W. J. H. Money, sessions judge of Backergunge, on the 18th November 1851.

Remarks by the sessions judge.—"The Government was prosecutor in this case. The prisoners denied the charges on which they were arraigned in this court and before the magistrate. In the Mofussil, prisoners Nos. 2 and 3 admitted the affray, but threw the blame upon prisoner No. 6 and his party as being the assailants. It appeared, from the evidence of witness No. 1, Nubkishen Dass, that on the last day of Cheyt, about one and a half *puhurs* of the morning, he saw at a distance of two *beegahs*, prisoner No. 2, and fifteen or sixteen persons on the part of one Izzutoollah Moonshee, proceeding to the north with sticks, and at the same moment about one hundred persons on the part of prisoner No. 6, armed with sticks, spears and other weapons, advancing; upon which both parties began to fight; that (pri-

1852. April 2. Case of NOOR ALEE and others.

soner No. 2's,) Noor Alee's, party being the weakest returned towards his house, and on being reinforced by fifty persons more, the affray again commenced, which resulted in the wounding of one Osman Khan, and prisoner No. 3, and another man on the part of prisoner No. 2, and the removal of Osman Khan by the party of prisoner No. 6, and of the other two men by the party of prisoner No. 2.

"It appeared that Izzutoollah Moonshee had purchased a four annas share of a *howla*, of which prisoner No. 6 was a sharer, and from not being able to obtain possession, disputes had occurred between them for about a year, each party seizing the other's ryots, and it was under the apprehension of similar acts being about to be committed on the morning in question that the affray originated. This witness, on the afternoon of the day alluded to, saw Osman Khan in a wounded and helpless state in the house of prisoner No. 6, a barbed spear wound on his left breast and blood flowing therefrom, and heard that he died eight days afterwards from the effect of the wound, in the house of prisoner No. 6. This statement was corroborated by the evidence of other witnesses, who recognized the prisoners as being concerned in the affray above-mentioned. Witness No. 19, Issuff, deposed to the fact of his seeing prisoner No. 6, and others forcibly carry off Osman Khan, deceased, and his subsequently seeing his corpse in the house of prisoner No. 6. Witness No. 20, Mahomed Abbass, deposed also to his seeing the corpse of the deceased in the house of prisoner No. 6. Witness No. 21, Musst. Shookerty, mother of deceased, deposed to his death, to his being about 30 years of age and in good health. Witness No. 23, Ookhur Mahomed, deposed to his having heard of the deceased leaving his residence in the Furreedpore district, and subsequently losing his life in this district. The evidence of witness No. 24, Lushkur Mahomed, uncle of the deceased, and of witness No. 25, Khedeer Mahomed, was much to the same purport. The prisoners gave petitions and cited witnesses to prove their innocence, and an *alibi;* but nothing was elicited in their favor. Prisoner No. 2 declared that the darogah had not properly investigated the case. Prisoner No. 3 denied his name being Kalachaund Sirdar. Prisoner No. 4 declared he was absent on the day of the affray. Prisoner No. 5 asserted his innocence, and prisoner No. 6 complained of the manner in which the case had been investigated in the Mofussil, and declared that Bhoyrub Birm, Talookdar, with whom he was in enmity, was the promoter of the charges against him. Although the body of Osman Khan, deceased, was not discovered and sent in to the sudder station, it is quite clear that he died; and there is the strongest presumption that his death was occasioned by the wound he received. I concurred,

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Case of NOOR ALKEE and others.

therefore, with the jury in considering the prisoners guilty of the second count in the indictment, and sentenced them to different grades of punishment accordingly."

Sentence passed by the lower court.—Nos. 2, 3, 4 and 5, each two (2) years' imprisonment, and a fine of rupees fifty (50) or labor, and No. 6, four (4) years' imprisonment and to a fine of rupees one hundred (100) or labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The sessions judge's remarks in statement No. 6 give full particulars of the cause and the circumstances of this case. Numerous witnesses, some of them independent of the parties now charged, have deposed to their presence at the time of the riot. It is fully proved that Osman Khan was wounded on the occasion, and that he was carried off to the house of Nubbee Newaz Khan and Dhun Shureef his brother; he was seen there in a wounded state and afterwards dead. The corpse was not sent in or examined by the medical officer, but the fact of Osman's death cannot, I think, be doubted. The party under Nubbee Newaz Khan were the assailants on this occasion, but frequent disputes had previously taken place regarding the four annas of the talook purchased by Izzutoollah. The prisoners have all pleaded *alibi* and have cited some thirty-five witnesses. Some of these speak in general terms in support of the defence, others state they know nothing of the parties who have cited them. The sessions judge and jury convict the prisoners on the 2nd count charged in the calendar. I see no ground for interference with the judge's sentence, which is hereby confirmed."

PRESENT:

SIR ROBERT BARLOW, BART., *Judge.*

GOVERNMENT

versus

GAZY MAHOMED KARIGUR (No. 1) AND DELALL KHAN (No. 2).

1852.

April 2.

Case of GAZY MAHOMED KARIGUR and another.

See preceding case.

CRIME CHARGED.—1st count, wilful murder of Osman Khan, *alias* Alee Mahomed; and 2nd count, affray attended with the culpable homicide of the said Osman Khan, *alias* Alee Mahomed, and the wounding of Panjoo, *alias* Kalachaund Sirdar.

CRIME ESTABLISHED.—Affray, attended with culpable homicide and wounding.

Committing Officer, Baboo Jogesh Chunder Ghose, deputy magistrate of Backergunge.

Tried before Mr. W. J. H. Money, sessions judge of Backergunge, on the 18th November 1851.

Remarks by the sessions judge.—"This case is connected with the case entered in the statement of convictions for this month. The Government was prosecutor. The prisoners denied the charges on which they were arraigned in this court and before the magistrate. They were, however, proved to have been concerned in the affray alluded to, on the part of prisoner No. 6. The prisoners gave petitions and cited witnesses to prove an *alibi*, but nothing was elicited in their favor. In their petition, they charged one Bhoyrub Birm, Talookdar, with having got up the case against them, and alluded to the disputes which existed between prisoner No. 2 and prisoner No. 6, mentioned in the previous statement* of convictions. I concurred with the jury in considering the prisoners guilty of the second count in the indictment, and sentenced them accordingly."

Sentence passed by the lower court.—Each three (3) years' imprisonment and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoner and Delall were parties to the affray in which Noor Alee and others have been convicted.

"They were apprehended in August and committed to the sessions in November. The evidence of Jan Mahomed, Sheik Zalum, Wuzeer Mullick and others, examined in the former case, was also taken in the trial of the prisoners. The defence set up is *alibi;* the witnesses were not credited either by the judge or the jury. Their evidence is certainly very unsatisfactory, and when weighed with that for the prosecution, is of no value. I confirm the sessions judge's sentence."

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* *See* remarks of sessions judge in preceding case of Noor Alee and others.

PRESENT:
SIR ROBERT BARLOW, BART., *Judge.*
R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT
versus
TUFUZZUL ALEE, ALIAS TOFAIL ALEE.

1852.

April 2.

Case of TUFUZZUL ALEE, *alias* TOFAIL ALEE.

Kissas declared barred from suspicion of insanity, but the *futwa* over-ruled, and capital sentence passed on full proof of the prisoner's sanity.

CRIME CHARGED.—Wilful murder of Musst. Sehrun Khatoon, with a *dáo.*

Committing Officer, Zynooddeen Hossein, deputy magistrate of Manickgunge, zillah Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 26th February 1852.

Remarks by the sessions judge.—"The prisoner is charged with the wilful murder of his wife, Sehrun Khatoon, and pleads 'not guilty.'

"The following are the circumstances of the case:—The prisoner married deceased about two years and half ago, but she has resided chiefly with her own family, where the prisoner was accustomed to go and remain from time to time for a few days together. At the period of the murder, however, his wife was staying with him at his house, and the day before the occurrence, her father, Emambux Mollah, came for her to take her to her own home, but the prisoner would not allow her to return with him, though she wished to do so, and it would seem that some high words passed between him and his father-in-law in consequence. It appears that early on the following morning, Musst. Oojulee, his step-mother, heard a noise in the house where the prisoner and his wife slept, and taking Musst. Oojla, a woman who lives in her house, with her, she went there and inquired of the prisoner what was the matter, when he replied that he had murdered his wife, and that unless they went away instantly he would kill them also. She consequently ran and called the prisoner's brother, Fuzul Alee, who was sleeping at his father-in-law's, a short distance off. He came immediately, and with the assistance of Mynooddeen and Golam Russool secured the prisoner, and then gave information to the police. The prisoner appears to have been in a violent state when secured by the above parties, to have threatened them, and to have struck a blow at Mynooddeen, which took effect on his hand. The prisoner admitted at once to these parties that he had murdered his wife, and they, on entering his house, found the poor woman dreadfully wounded, and at the point of death—and the prisoner's *dáo*, with which the wounds had been inflicted, lying by her side. The above circumstances are proved by the evidence of the witnesses Nos. 1, 2, 8, 9, and 10.

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April 2.

Case of TUFUZZUL ALEE, *alias* TOFAIL ALEE.

"The witnesses to the inquest prove the existence of severe wounds, as of a *dáo*, about the head and neck of deceased, and the sub-assistant surgeon deposes to having examined the body and to having found severe wounds on the head and neck, and fracture of the vertibræ, &c., and which, in his opinion, caused death.

"The prisoner confessed in the Mofussil having murdered his wife, in consequence of her loose conduct, and to his discovery of an intrigue between her and one Abbass Kazee, which, in spite of his remonstrances, she persisted in carrying on. He adds also, that he attempted to cut his own throat after committing the deed. This confession has been duly attested by the witnesses Nos. 4 and 5. The prisoner's answer before the deputy magistrate, though containing a repetition of his wife's misconduct, their quarrelling and other admissions of a criminating character, does not amount to a confession of the murder. I deemed it right, however, as it had been taken down in the presence of witnesses, to send for them and have it attested. Before this court the prisoner has set up no defence, maintaining an immovable silence, which he could not be induced to break.

"A doubt as to the soundness of mind of the prisoner has been raised in this case. I find that he was sent by the joint magistrate of Furreedpore to the sub-assistant surgeon, on the 18th of October last, with a request, that he would favor him with his opinion of his state of mind, to which he replied that he did not consider him to be laboring under any mental aberration. In his evidence before this court, the sub-assistant surgeon adhered to the opinion above quoted. It did not, however, appear to me that the medical officer had had sufficient time or opportunity of judging on the subject, and on the 6th instant, having concluded the evidence for the prosecution, I postponed the trial, and ordered the prisoner to be placed in the hospital, under the sub-assistant surgeon's care, in order that he might have daily opportunity of watching his actions, &c. On the 26th, I again examined the sub-assistant surgeon, and his evidence goes to show that no symptoms of unsoundness of mind exist. The witnesses Nos. 8, 9 and 10 speak to the prisoner's having had one or two temporary attacks of aberration of intellect, but their evidence on this point is scarcely admissible, when it is considered that one is his own brother, and another his step-mother.

"The *futwa* of the law officer convicts the prisoner of murder, but declares *kissas* to be barred, in consequence of the doubt as to the prisoner's state of mind; and, taking all the circumstances of the case into consideration, I hesitate to propose a capital sentence, and beg to recommend that the prisoner be imprisoned for life in the Allipore jail."

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April 2.

Case of TUFUZZUL ALEE, *alias* TOFAIL ALEE.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. R. H. Mytton.)—"The prisoner is charged with the wilful murder of his wife Sehrun Khatoon.

"The *futwa* of the law officer in the zillah convicts him of murder, but declares *kissas* to be barred in consequence of the doubt as to the prisoner's state of mind. The sessions judge, taking all the circumstances into consideration, hesitates to propose a capital sentence, and begs to recommend that the prisoner be imprisoned for life in the Allipore jail. This is a conviction with recommendation of a mitigated sentence founded on doubts of the prisoner's sanity.

"None of the witnesses have deposed to the prisoner's being insane *at the time* he committed the deed. His Mofussil and foujdaree confessions do not evince any aberration of mind; and the witnesses to both have sworn that he was perfectly sane. Those to the Mofussil confession live in the prisoner's village, and say they never knew him to be out of his mind. Two witnesses, Mynooddeen and Gholam Russool, state the same, as does Adoo, the chowkeedar of the village.

"The sub-assistant surgeon, Neelmoney Dutt, reported to the same effect to the magistrate, in his letter of the 20th October, and adhered to that opinion when examined in the sessions court. The sessions judge, not satisfied, and thinking that the sub-assistant 'had not had sufficient time or opportunity of 'judging on the subject, after concluding the evidence for the 'prosecution, on the 6th of February last, postponed the trial, 'and put the prisoner under his care, that he might have an 'opportunity of watching his actions.'

"The medical officer was again examined in the sessions court on the 26th February, and deposed that no symptoms of unsoundness of mind existed. In answer to the last question,—have you ascertained from your assistant in the hospital, or any of the other inmates, whether the prisoner, though disinclined to answer your questions, ever communicated rationally with them?—put to him, the witness stated that he had ascertained from his assistant and other inmates of the jail, that the prisoner asked him for food and other comforts of life. The witnesses to the foujdaree confession depose that the prisoner was quite sane when he confessed before the magistrate.

"Opposed to the above evidence is that of the witness No. 8, Oojulee, the prisoner's step-mother, of Fuzul Alee, his brother, and of Imam Buksh, (not examined in the foujdaree court), his father-in-law. All of them, however, speak of the prisoner having at some former period labored under a degree of aberration of mind. Another Oojulee, witness No. 9, states that she heard from the prisoner himself that he had returned from Calcutta out of his mind. But no one deposes to the prisoner ever being violent.

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April 2.

Case of TUFUZZUL ALEE, *alias* TOFAIL ALEE.

"Weighing the evidence on the record with reference to the prisoner's state of mind at the time he committed the murder, and taking into consideration his confessions and the evidence of the sub-assistant surgeon, I am obliged to come to the conclusion, that the prisoner is a responsible man. He has endeavored to justify his conduct by throwing aspersions on his wife's character and charging her with infidelity. Not a witness supports this charge. On the contrary, they all depose to her having been a chaste and good woman. The place and hour of the murder preclude all idea of immediate cause of irritation. There does not appear to have been any quarrel between the prisoner and deceased; and there was no ground whatever for his doubting his wife's fidelity. He, however, charged her with the crime, and cut her to pieces on the spot, in the room where she had slept with him and her infant child.

"I see nothing in this case which justifies a mitigated sentence.

"Certainly, there is no sufficient proof of insanity, or of a state of mind which would exonerate the prisoner of responsibility as a rational being. He had some words with his father-in-law, who wished to take the deceased to his house three days before the murder. No other cause is shown for the commission of the crime.

"I concur with the sessions judge in the conviction of the prisoner, on charge of wilful murder; but seeing no ground for mitigation, I would sentence him capitally."

MR. R. H. MYTTON.—"The evidence in this case has been fully and carefully reviewed by Sir R. Barlow.

"During the Mofussil inquiry, no hint as to the prisoner having at any time been of insane mind was given. Before the magistrate his step-mother stated he was formerly 'a little as it 'were deranged,—*kinchit onumad mizaj*.' His brother and another witness said that before his marriage, *i. e.*, about four years ago, he was deranged. These witnesses in the sessions court add to this, that a few days before the murder the prisoner was sullen and silent, but none of them say that he was deranged at the time of the occurrence. His statements to the darogah are clear and connected. The attesting witnesses to them observed no symptoms of insanity. All the witnesses examined, who are acquainted with him, (except the above noted three,) never saw or heard of his being out of his mind, and the sub-assistant surgeon, after full opportunity allowed for the express purpose of observation, deposes that he believes the prisoner to be sane. I can only come to the conclusion to which Sir R. Barlow has arrived, *viz.*, that the prisoner was sane when he committed the murder and has been so ever since. I therefore concur with him, that there is no reason for abstaining from passing a capital sentence. Orders will issue for the prisoner's execution."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

MUSST. BHINKI.

1852.

April 2.

Case of MUSST. BHINKI.

The prisoner irritated with her husband, murdered her co-wife from some unexplained motive of revenge,—sentenced to death.

CRIME CHARGED.—Wilful murder of Musst. Koonree.

Committing Officer, Mr. W. T. Tucker, officiating magistrate of Patna.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 21st February 1852.

Remarks by the sessions judge.—"The circumstances of this case are as follows:—Dursun and Achumbit Chowkeedars deposed to having been alarmed by cries proceeding from a dwelling, in which Bundhoo Dhobee, the husband of the prisoner, was residing with his family, of which Koonree, the deceased, a relative of his, seems to have been a member. On proceeding to the dwelling, they found the prisoner striking the deceased with a sword, of which having first disarmed her, they took her into custody. They found eight wounds on the person of the deceased, who was, they say, an old woman of 60 years of age.

"The civil surgeon deposed to death having ensued as the consequence of the wounds Koonree had received on the 9th January, the wounds having been inflicted on the 6th; one of the severe wounds was on the right lower jaw, and the left ear was nearly severed by another. There were other most severe wounds on the arms, both bones of the right forearm being cut through.

"The prisoner in the thanna confessed the act of wounding the deceased, saying, that her husband had been beating her for several days, and no one had interfered to protect her from his violence. In consequence of which, on the day of this occurrence, she took the sword with intent to put an end to her existence, when Koonree running to prevent her, she had inflicted the wounds upon her; and in reply to a question, she admitted that she had twice before quarrelled with Koonree, who was her husband's uncle's daughter.

"The confession which she made before the magistrate differs from the above in some respects. She said, that when she attempted to put an end to her life Koonree interfered and seized her, whereupon bringing the sword she had commenced wounding her when she was seized by the chowkeedars. She added that she struck Koonree, because she used to take the side of her husband.

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Case of Musst. Bhinki.

"The last confession tallies nearest with the deposition of the wounded woman herself, taken by the officiating magistrate, on the evening of the day on which the wounds were inflicted, when Koonree deposed that Bundhoo, husband of the prisoner, had beaten and kicked the prisoner the day previous, and that she, Koonree, while working at the mill-stones on the morning of the occurrence, having called to her to get up, wash, eat and drink, presently felt herself assailed and wounded as she sat grinding, and then saw that the prisoner had a sword in her hand with which she was striking her.

"The prisoner in her defence denies her confessions, pretending that she had said she was not in possession of her senses when her statements were written down.

"There cannot be the smallest doubt that the prisoner inflicted the wounds which caused the death of the deceased in three days after. The evidence of the two chowkeedars, corroborated by her confessions, duly authenticated as they have been, is quite sufficient to prove that fact. Her confession before the magistrate, added to the statement of the wounded woman, proves that she acted under the impulse of a revengeful feeling towards Koonree, engendered by some act of the latter, which she calls taking part with her husband; what part Koonree took besides exhorting the prisoner to go to her daily avocations, there is nothing but this assertion of the prisoner to show. That she had been brutally treated the day before by her husband, Koonree's evidence shows, and it is very likely that the old woman's expostulation in the morning aggravated the irritation of her mind, so natural under the circumstances, and may even have suggested an act not before contemplated.

"Still supposing even that the deceased had sided with the husband of the prisoner on the previous day, the provocation cannot be admitted to have been of that sudden and violent nature, which could make the act an unpremeditated one. The prisoner must therefore be convicted of wilful murder. The circumstance, however, of irritation of mind under which undoubtedly the deed was committed is such as it appears to me, the precedents of the Sudder Nizamut Adawlut show, is generally allowed to constitute a ground for a more lenient sentence than that of a capital punishment. I, therefore, recommend instead, a sentence of imprisonment for life with labor suited to her sex to be passed upon the prisoner."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. A. J. M. Mills.)—Mr. A. J. M. Mills.—"The prisoner is, in my opinion, proved to have committed a wilful and deliberate murder, and I cannot agree with the sessions judge, that the irritation of mind under which the prisoner committed the deed, should be admitted to bar a capital sentence in this

case. The quarrel between the prisoner and her husband had occurred on the day previous; the morning of the murder found the prisoner in a sulky mood, refusing to get up and wash and take her meals. The deceased merely expostulated with her, when she attacked her with a sword as she was spinning thread,* and inflicted on her eight severe wounds. The prisoner in her Mofussil confession stated, that she struck the deceased because she took the side of her husband. The infliction of such wounds on the deceased, who was an old, infirm, unoffending woman, 60 years of age, manifests a deliberate intention to take life. I consider the act as having been done under the influence of some revengeful feeling, and seeing no circumstance which would justify the remission of the punishment of death, would sentence her capitally."

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Sir R. Barlow.—"The prisoner before the police, in her confession said, that in consequence of her quarrels with her husband Bundhoo, she was going to kill herself, having a sword in her hand, when the deceased remonstrated with her, saying, what are you about, you have two children, and endeavoured to take the sword from her, on which she attacked the deceased and cut her down. Before the magistrate she said that she went home and brought the sword with which she killed the deceased. Whichever story be true, there is nothing which can extenuate her crime. The deceased had given her no cause of offence or irritation. It appears, from the depositions of the deceased taken in the Mofussil and before the magistrate, that she was spinning at the time that the prisoner rushed upon her and inflicted the several wounds, which the medical officer has sworn were the cause of death. Deceased was an old woman; there 'was but little hope of her recovery when she was admitted 'to hospital, and never rallied. Exhaustion and loss of blood, 'consequent on the injuries described,' caused her death.

"I see no circumstances in the case which would justify a mitigated sentence, and concur with Mr. Mills in passing capital punishment upon the prisoner.

"I observe that the prisoner's confession before the magistrate is certified as that of 'Nankee' in all the vernacular papers, and in the calendar she is called 'Bhinki;' her identity however is established; the error is therefore of no importance: care should always be taken that the name of a confessing prisoner is correctly given in the heading of the confession."

* The sessions judge says 'working at the mill-stones;' this seems to be a mistake.

PRESENT:

A. J. M. MILLS, Esq. *Officiating Judge.*

HURDAYAL SINGH

versus

SHEIKH SHOODHUN (No. 1), SHEIKH LOYRABEEAH (No. 2), SHEIKH MUNSOOR (No. 3), SHEIKH LOODEEAH (No. 4), SHEIKH JEHANGEER (No. 5), DOOLARAM DEB (No. 6), BEJOY CHUNDRA SURMA BHUTTACHARGE (No. 7) AND AUND CHUNDRA SURMA (No. 8).

1852.

April 3.

Case of SHEIKH SHOODHUN and others.

The prisoners found 'guilty' by the law officer of instigating a homicide, because it took place in the court-yard of their house, acquitted by the Nizamut Adawlut, in concurrence with the sessions judge, on the ground that there was nevertheless no proof of instigation by them.

CRIME CHARGED.—Nos. 1 to 6, 1st count, wilful murder of Kullean Singh; 2nd count, accomplices and accessaries before and after the fact of the above crime; Nos. 7 and 8, 1st count, ordering the above crime; 2nd count, accessaries before and after the fact of the above crime.

Committing Officer, Mr. R. C. Raikes, magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 2nd March 1852.

Remarks by the sessions judge.—" The deceased, when formerly living in the same village as the prosecutor and No. 2, the prisoner's ryot, had lent him some money, and coming to recover it, put up with the prosecutor, from whose evidence and that of others it is proved that the deceased seeing No. 2 pass by demanded payment, and excuses being made, he seized him and kept him there till next morning. In the mean time No. 1, No. 2's brother, having heard of it, went and complained to the prisoners, asking their interference to settle the matter, and No. 7 told him and No. 6, their servant, to call the parties the next day, and they would endeavour to settle the matter; accordingly Nos. 1 and 6 brought the deceased, prosecutor and No. 2, to their house before, as some of the eye-witnesses say, No. 7 was awake and while No. 8 had gone out to answer a call of nature; that a dispute about interest arising between No. 1 and deceased, the latter was assaulted, from the effects of which he died that night. The prosecutor in his first deposition before the police, did not charge the prisoners with having ordered the assault, and the prisoners have all along given the above account of the occurrence, and seeing no sufficient inducement for their having taken an active part in the commission of the crime, I recommend their acquittal.

" The prisoners Nos. 7 and 8 are on bail and the rest in jail. Prisoners Nos. 1 to 6 have been sentenced to five (5) years' imprisonment each, with labor in irons, but owing to a difference of

opinion with the law officer in regard to prisoners Nos. 7 and 8, the issue of warrant upon all the prisoners has been postponed till the receipt of the court's orders."

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Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—" I concur in the view of the case taken by the sessions judge. The eye-witnesses distinctly depose to the prisoners Nos. 7 and 8 *not being present*, neither when the dispute arose, nor when the deceased was assaulted by Munsoor, and the other prisoners.

" The law officer convicts the prisoners Nos. 7 and 8 on the presumption arising from the fact of the homicide having been committed in their court-yard, but this circumstance, without some distinct proof, that they commanded or incited the other prisoners to commit the assault, is not sufficient evidence of their guilt. I acquit the prisoners and direct their immediate release."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

BISSONATH SIRMAH CHUCKERWURTEE

versus

SHEIKH SHADEE (No. 1), SHEIKH SHORUBDEE (No. 2) AND SHEIKH DOBOO MAL (No. 8).

1852. April 3. Case of SHEIKH SHADEE and others.

In a case of burglary, sentence of seven years' imprisonment upon the principals, and of five years' on a receiver, confirmed.

CRIME CHARGED.—Nos. 1 and 2, burglary, by cutting the *tattee* of the house of the prosecutor, and theft of cash (rupees and gold mohurs) and property valued at Company's rupees 626; No 8, knowingly receiving and possessing property obtained by the above burglary and theft.

CRIME ESTABLISHED.—Nos. 1 and 2, burglary; No. 8, knowingly receiving property obtained by burglary.

Committing Officer, Mr. A. Abercrombie, assistant with powers of joint magistrate, at Jumalpore.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 2nd January 1852.

Remarks by the sessions judge.—" The prosecutor's house was broken into on the night of the 7th June, and property to the value of rupees 626 stolen; prisoner No. 1 and another, since dead, were apprehended on suspicion as bad characters, whose confession led to the apprehension of the other prisoners; and Nos. 1 and 2 confessed in the Mofussil and before the magistrate having committed the burglary, and No. 8, in the Mofussil, having knowingly received property obtained thereby; and a large quantity of the property was given up by Nos. 1, 2 and 8. The defence of all three prisoners was ill-treatment by the

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police, which their witnesses were unable to prove, I therefore concurred in the *futwa* of the law officer, which convicts Nos. 1 and 2 of burglary, and No. 8, of knowingly receiving property obtained thereby."

Sentence passed by the lower court.—Nos. 1 and 2, each to be imprisoned with labor in irons for seven (7) years, and prisoner No. 8 to be imprisoned with labor in irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"I find no reason to interfere with the sentence passed by the sessions judge."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

TRIAL NO. 1.—GOBIND DASS ON THE PART OF SITOL CHUNDER SANDIAL AND HARAN CHUNDER SANDIAL

TRIAL NO 2.—NOBIN CHUNDER DASS ON THE PART OF SITOL CHUNDER SANDIAL.

versus

BIRJO NATH SIRCAR (NO. 12) AND ROHMAN JEMADAR (NO. 13).

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The sessions court considered to have a better opportunity of judging of the credibility of witnesses, from observing their manner, than the Nizamut Adawlut, and interference with a sentence on mere suspicion, regarding the truth of evidence, accepted by the sessions court, refused.

CRIME CHARGED.—IN TRIAL NO. 1.—Nos. 12 and 13 riotously attacking the houses of the prosecutor's employers at night, and breaking it open and plundering therefrom property valued at rupees 583; and also wounding and carrying off Khowaj Sheikh, who has not since been heard of. And in TRIAL No. 2, No. 12, affray and attacking the house of the prosecutor's employer in open day, and plundering property to the value of rupees 24-12, and also assaulting prosecutor.

CRIME ESTABLISHED.—IN TRIAL NO. 1.—Nos. 12 and 13 riotously attacking the houses of the prosecutor's employers at night. And in trial No. 2, No. 12 riotously attacking and plundering houses.

Committing Officer, Mr. J. J. Ward, joint magistrate of Pubnah, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 30th December 1851.

Remarks by the sessions judge.—TRIAL NO. 1.—"This was a very aggravated case of plundering the houses of the prosecutor's employers at night, and in every respect the attack was similar to a robbery by open violence. With regard to the carrying off a person by name Khowaj, the evidence was not so clear, and no search had been made for him, or the property

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taken, although, by the order passed by the superior court in the case of Radhamohun Paul and others, on the 7th September 1849,* search might have been made for the property. It would appear that the Sandials had been employed at the Hazleebut indigo factory, but have since been discharged; and because they relinquished a *jote*, situated within an *ijarah* held by the factory, this violent and unjustifiable attack was made on their houses and property. I concur entirely in the conviction, and have sentenced the prisoners as stated in the preceding column."

TRIAL No. 2.—"This was another and similar attack made on the house of one of the same persons in *open day*, but on a previous date; and again the *futwa* convicts the prisoner of the charge, and I fully concur in the conviction, and have sentenced him as stated in the preceding column. Here again no search was made for the property, and the delay in punishing the offenders probably led to the commission of the more grave outrage perpetrated by them on the 8th of September 1851."

Sentence passed by the lower court.—No. 12, consolidated sentence for two offences, three (3) years' imprisonment without irons, and a fine of rupees two hundred (200) or labor; and No. 13, two (2) years' imprisonment, and a fine of rupees one hundred (100) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"Birjo Nath Sircar has appealed from the sentence passed upon him in two cases, and Rohman Jemadar from that against him in one.

"The circumstance of the owner of the house and property plundered, not having on either occasion come forward in person as complainant, and the absence of persons of respectability as witnesses, casts some suspicion on the cases. It would have been more satisfactory if the magistrate had required the owner himself to appear. However, the witnesses for the prosecution in both cases have distinctly deposed to the charges, and there

* *From the Register of the Nizamut Adawlut to the Sessions Judge of Rajshahye, No. 1091, dated 7th September 1849.*

"The Court having had before them your letter, No. 47, dated 14th ultimo, with the joint magistrate of Pubna's explanation, that no search is customary for plundered property, direct me to inform you, that they do not consider any general rule should prevail either directing or prohibiting search in such cases; but they are of opinion, that in particular instances, the recovery of plundered property should be attempted equally as that of stolen property, both for the indemnification of the owners and to obtain better proof against the perpetrators of outrages. The court, therefore, think that there may be cases in which, in the exercise of a sound discretion, the police and the joint magistrate should endeavour to recover plundered property, strictly, however, under the rules for the recovery of stolen property prescribed by Regulation XX. of 1817."

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are no important discrepancies in their evidence. Neither the judge, (an officer of great experience) nor the law officer, have raised any doubt as to their credibility. On this point they are much better able to form a just opinion than I am, as they have had an opportunity, which I have not, of observing the manner in which they gave their evidence. The defence set up is very weak; and in the case of Birjo Nath Sircar, wholly unsupported. The grounds of appeal are equally futile. I therefore do not find any sufficient reason for interfering with the sentence of the sessions court."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

PHOOL MAHOMED

versus

SHUFFEE MAHOMED DALAL (No. 2), PEERBUX (No. 3), MEHER MUNDUL (No. 4), SONAH NUSSO (No 5) AND DOME NUSSO (No. 6).

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Case of SHUFFEE MAHOMED DALAL and others.

In a case of severe wounding accompanied with circumstances of great cruelty and aggravation, the leader of the assaulting party sentenced to transportation for life, and the other prisoners to imprisonment in banishment for fourteen years.

CRIME CHARGED.—1st count, assault with severe wounding; and 2nd count, being present, aiding and abetting in the same.

Committing Officer, Mr. A. G. Macdonald, magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 27th February 1852.

Remarks by the sessions judge.—"The prosecutor (aged about thirty-five or thirty-six years of age, a person who practised much as a *mookhtar* in the magistrate's court,) deposed, on solemn affirmation, that on a Sunday, in Kartik last, his nephew 'Elim' (witness No. 3) went to sell a vegetable called brinjall, at the market of Lal Beg, for which, though others had offered him eight pice, Shuffee (prisoner No. 2,) only giving him three pice, was forcibly carrying it off, when a quarrel ensued between him and Elim, Shuffee beating Elim, after which Elim and his father Gool Mahomed (witness No. 2,) on their return home, told the prosecutor (near to whom they lived) what had happened, when the prosecutor bid them proceed to the magistrate at Rungpore to complain, whence at one *puhur* the following morning, prosecutor with Saduck, Gool Mahomed, Elim and Wuzeer Mahomed (witnesses Nos. 1 to 4,) set off for the foujdaree cutcherry and was accompanied by one Kubeer, (witness No. 7, who was also going to the magistrate's cutcherry on his own business,) and when they had got as far as the road opposite the *jheel* of Dusna, they saw many persons armed with clubs appearing from a field of kulai on the north side of the *jheel*, calling out 'beat, seize,' on which, prosecutor, conceiving that,

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owing to the quarrel of the previous day, they were coming to beat them, prosecutor with Wuzeer Mahomed, Gool Mahomed and Elim fled to and entered the house of Hola Pykar (the other two persons, *viz.*, Saduck and Kubeer, having ran away in other directions). The assailants surrounded the house, and throwing down the *jhamp* of the southern compartment of the house, Shuffee (prisoner No. 2) and Sabur, (not apprehended,) disregarding the entreaties of the prosecutor, that they would not hurt him, as he had done nothing, seized the prosecutor by the neck with a cloth and brought him out, the rest of the prisoners with others (not apprehended,) severely maltreating him with clubs, when prosecutor fell in the yard, from which the assailants dragged him along the ground into a field, when Shuffee, taking a pin for tethering cattle, called '*goroor khoont*' from the hand of prisoner No. 2, thrust it first into *the right eye of the prosecutor* and *then into the left eye*, causing *the latter to* protrude from the *socket*, and *rendering him insensible*, in which state afterwards prosecutor had the said pin *thrust up his anus*, and the fingers of both his hands *placed on one bamboo and beaten with another*.

"On information given at the thanna, the prosecutor was found on the spot the same day by the police in an insensible condition, and conveyed on a *charpaee* to the jail hospital, where he had recovered, with the exception of having *entirely lost the vision of the left eye* and *almost wholly so that* of the right. On the trial, both eyelids were closed, the left one he could not raise at all, and the right only with his fingers, when he said he could not distinguish any object—all appeared obscure.

"The assailants also severely assaulted the prosecutor's brother Gool Mahomed, (witness No. 2,) who was also conveyed from the spot on a *charpaee* to the hospital where he recovered.

"*No. 2, Gool Mahomed, brother of prosecutor.*—Witness, deposes in detail to the assault committed at the instigation of Shuffee (prisoner No. 2,) on his son Elim, at the market of Lal Beg, on the day previous to the occurrence of the charge on which the prisoners are committed, and establishes most fully the statement of the prosecutor; witness having seen him, at a short distance off, assaulted and severely wounded by all the prisoners, of whom Shuffee (prisoner No. 2,) was the principal, and who also assaulted him, witness.

"*No. 3, Elim, son of the preceding witness.*—This witness deposes to the quarrel which ensued at the *haut* the day before the event between him and Shuffee (prisoner No. 2,) when he, witness, was assaulted at the instigation of Shuffee, and so far confirms the assault committed on the prosecutor on the day of the event, that he, witness, while in the southern compartment of Hola's house, in which the prosecutor and witnesses Nos. 2

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and 4 had sought refuge from the apprehended attack of Shuffee and a number of assailants, *saw* Shuffee (prisoner No. 2) and Sabur (not apprehended,) lay hold of the prosecutor *by the neck* with a piece of cloth *(gumcha)* and forcibly *carry him* outside the room, while other assailants began to beat him (prosecutor). Witness states that when Sonah and Dome, (prisoners Nos. 5 and 6,) who had first seized him (witness,) had let him go, in order to lay hold of Wuzeer (witness No. 4,) in the room, witness escaped; that on returning to the spot the same day after the assailants had left, witness found the prosecutor lying on the ground south of the road, with his whole body wounded and bleeding, both his eyes swollen and closed and covered with blood. Prosecutor was unable to speak. Much blood was flowing from his anus, and he was nearly dead. Witness No. 2 (another brother of prosecutor,) was seated near him crying, and witness also saw his father, Gool Mahomed, (witness No. 4) lying at the spot with a wound over his eye-brow bleeding, and all parts of his body wounded. Witness sat by him until the arrival of the police, when prosecutor and his father having been conveyed to the magistrate, witness returned home.

"*No.* 4, *Wuzeer, another brother of prosecutor.*—Witness deposes to the same effect as the prosecutor and the preceding two witnesses, implicating the whole of the prisoners as having assaulted him (witness), the prosecutor and witnesses Nos. 2 and 3, who were with him in the room, Shuffee (prisoner No. 2) and Sabur (absconded) having thrown a *gumcha* round the neck of prosecutor and forcibly taken him out of the room and thrown him down in the yard, the assailants throwing him (witness) down and beating him and the rest, *viz.*, prosecutor, Gool Mahomed and Elim. Witness subsequently was taken away by Hola's wife, who hid him in the western compartment, what after took place witness did not know.

"*Witnesses Nos.* 5 *and* 6.—These two witnesses were passing the road with their bullocks at the time of the event and witnessed the assault of the prosecutor and his brother Gool Mahomed (witness No. 2,) at the hands of the prisoners collectively and other persons (not apprehended,) to the extent nearly stated by the prosecutor and witness No. 2.

"*Witnesses Nos.* 8, 9, 10 *and* 11.—These witnesses also depose to having witnessed more or less the assault of the prosecutor by all the prisoners.

"The medical officer deposed before the magistrate, on the 29th November last, in respect to the prosecutor and Gool Mahomed, sent into hospital on the 10th of that month, that Phool Mahomed (prosecutor) had a contusion over both eyes and a contused wound at the anus and marks on his head, arms and legs, from having been severely beaten; that Gool Mahomed

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had marks of stripes on the left cheek, left forearm, right leg and back, apparently from stripes from a stick; that these injuries to Gool Mahomed were of little importance; that the effect of the blow on the head given to Phool Mahomed had been *the loss of vision of the left eye;* that he was of opinion that the injury to the eyes was produced by a blow on the forehead immediately above the orbits; that he thought it very likely the wound of the anus had been produced by the thrust of a broken pointed stick or bamboo; that although sympathetic fever ran high, he did not consider his (Phool Mahomed's) condition, at any time dangerous.

"The medical officer having been absent on sick leave at the time of trial, the evidence of the subscribing witnesses (Nos. 18 and 19) to the deposition before the magistrate, was taken by me as to his having given the deposition on solemn affirmation.

"The above opinion of the medical officer as to the injury to the eyes of the prosecutor (Phool Mahomed) having arisen from a blow on the forehead immediately above the orbits, does not coincide with the evidence of the eye-witnesses to the fact, it having been deposed by several witnesses that the eyes had been injured by a piece of wood used for tethering cattle, called a '*goroor khoont*', which is pointed at one end.

"*Bholanath Dass, police sirdar of the Ghoondee, at the Sudder Station, who made the sooruthal*—Deposed that, having been deputed by the darogah to the spot, he saw on the eastern side of the road, which was south of Lal Beg, Phool Mahomed lying wounded, and on the western side of the road before a house, Gool Mahomed lying wounded; witness called to both these men, but they gave no answer. Witness then, with the assistance of sundry persons, raised them on *charpaees,* and brought them to the Ghoondee, where was the darogah, and with the darogah brought them to the magistrate, who inquired who had beaten them. Phool Mahomed answered that Shuffee, Deewan, Peerbux, Sonaoollah and Dome had beaten him consequent on a quarrel at a market the day before; that Shuffee had put a *khoont* into his eye and into his anus; and that Shuffee, Dome and Peerbux had beaten him on the hand; that they were then sent to the hospital; witness states (in respect to the wounds of Phool Mahomed) that there was a wound of a club on his head, and that the bones of the fingers had been broken, and blood was flowing from the anus, and both eyes were swollen and bleeding, and the whole body was swollen, and different parts of it wounded and bleeding. Witness did not examine Gool Mahomed's wounds.

"*Defence of Prisoners.*—In their defence the prisoners resort to *alibi,* calling numerous witnesses in support of their respective pleas, but whose evidence, in contrast with the posi-

1852. tive testimony of the many eye-witnesses to the fact, and the seriously injured state of the prosecutor's person, I could not credit.

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"The Mahomedan law officer finds the prisoners Shuffee and Peerbux, as principals, guilty of the 1st count, and the remainder of the prisoners guilty of the 2nd count, and considered them all liable to punishment by *tazeer*.

"I so far concur in this finding, as to convict all the prisoners as accomplices in the charge, considering Shuffee clearly to have been the principal; and as I conceive him to be deserving of a severer punishment than I can inflict, I have submitted this reference. Adverting to the aggravated assault to which he has been maliciously instrumental, and in which he has taken so leading a part, and to the very serious injury in the privation of sight, resulting to the prosecutor from the cruel acts of this prisoner, I would recommend him to be sentenced to fourteen (14) years' imprisonment with labor and irons, and the rest of the prisoners to seven (7) years' imprisonment with labor and irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The particulars of this case are given in the judge's letter of reference. Baboo Ramapersaud has appeared for the prisoners in this court. He urges that the statement of the prosecutor is inconsistent with his proceedings and improbable :—

"*First*,—That he represents himself to have been seized at the house of Hola Pykar, who, together with his son, were in the house, but that he did not cause them to be examined.

"*Secondly*,—That the prosecutor states that he heard that the prisoner Shuffee had communicated his intention of beating him to his zemindar, the collectorate nazir and a vakeel, nevertheless he did not cite them as witnesses.

"*Thirdly*,—That none of the residents of the immediate neighbourhood, in which the outrage occurred, are witnesses.

"*Fourthly*,—That in his first statement in hospital, he only named three witnesses, *viz.*, Kobeer, Fyzoolla and Habeeboolla, son of Hola Pykar; that the two last of these were not examined, and that the first does not implicate any of the prisoners; that the witnesses who were examined and implicate them are relatives of the prosecutor.

"A careful examination of the papers relating to the preliminary inquiry, and a consideration of the circumstances of the case, and of the evidence adduced, afford explanation quite sufficient to do away with the force of the above arguments urged for an acquittal. I proceed to review them *seriatim*.

"*First*,—It is true that the prosecutor asserted Hola Pykar's house to be the scene of the commencement of the outrage,

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but he was not to blame if Hola Pykar was not examined as a witness; not only did he mention Hola Pykar's name, but he expressly named his son as one of his witnesses. The son was sent for by the magistrate, and his property attached to cause his attendance without avail. His absence is attributable to the prisoner Shuffee Mahomed being his landlord.

"The magistrate did not deem his evidence indispensable, and was satisfied with the ample evidence adduced independent of it. If the evidence of Hola and his son would have tended to clear the prisoners, it was quite competent to them to cite them, and to cause their examination in the sessions court, which they did not do.

"*Secondly*,—This circumstance was first stated in the sessions court, consequently the names of the persons alluded to were not entered in the calendar, and the court doubtless deemed the case sufficiently proved without calling for and examining them.

"*Thirdly*,—Several of the neighbours were examined by the darogah and some of them by the magistrate. They deposed that they saw the beating, but could not recognize any one, adding to the darogah, that they heard that the prisoner Shuffee was the guilty party. This was not evidence which could be legally accepted to prove the guilt of the prisoners, and, therefore, it is presumed, their names were not entered in the calendar, and they were consequently not examined in the sessions court for the prosecution. Three of them, *viz*., Kalo, Nujjy and Belat, were named as witnesses for the defence of Shuffee, but he did not cause them to be examined.

"A satisfactory reason for the immediate neighbours, pretending not to have identified any one, is given in the *futwa*. The prisoners Shuffee and Peerbux are the *ijaradars* of the villages all around, and the inhabitants are their *ryots*.

"*Fourthly*,—The statement given by the prosecutor in hospital here alluded to, is a very imperfect one, owing clearly to the unfortunate man having had at that time but very imperfect power of utterance. He did not name as witnesses any of the persons who were with him at the time, except Kobeer, thinking very probably and very naturally that they were complainants like himself. In answer to the question who his witnesses were, he said 'Kobeer, Fyzoolla and Hobeeboolla. My brother Sadik 'knows the others. Saying this he was silent.'

"This is the end of his deposition, showing that he could utter no more. From the injuries sustained by Gool Mahomed, Elim and Wuzeer, it is clear that they were present, and their evidence alone proves the offence charged against all the prisoners. That the witnesses are connexions of prosecutor, does not invalidate their testimony, which, as to the main facts, is credible.

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"The witness Kobeer, on seeing the party come out of Konaypora, to attack them, ran off and stood at a distance. He deposes to seeing the beating and hearing some one cry out; 'There goes that fellow Phool Mahomed, catch him,' and to other particulars. From the place where he stood, however, he says that he could not identify any one. He afterwards went up and saw prosecutor and Gool Mahomed lying wounded, and people, who were collected there, said that Shuffee Mahomed had beaten them.

"I consider the guilt of the prisoners fully established against them. I convict Shuffee Mahomed of being a principal, the other prisoners of being aiders and abettors in the assault, with severe wounding.

"This case is one of the most diabolical cruelty. The prosecutor and his party, while proceeding to complain to a court of justice, were attacked with evident premeditation in order to prevent their taking that step. The prosecutor was dragged out of a house, in which he had taken refuge, by a cloth round his neck. He was severely beaten, and deprived of his sight, most probably for life. The sight of one eye is certainly gone. After this, while he was in a state of insensibility, a tethering pin was rammed up his anus. This final act was one of deliberate wanton cruelty. The case, in degree of criminality, falls little short of murder. The prisoner Shuffee Mahomed is proved to have been the leader of the party, and I consider him deserving of the severest punishment which the law permits, and I therefore sentence him to imprisonment for life in transportation, and the other prisoners to imprisonment with labor and irons in banishment for fourteen (14) years.

"The reference has been made only with respect to one prisoner, but the case is open to revision by this court as regards them all, under Clause 6, Section IV. Regulation IX. 1831. I have availed myself of this privilege."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

SHEIKH HAZAREE (No. 1), PAJOO SIRDAR (No. 2), SHEIKH JHUGOREE (No. 3), SHEIKH BUDDEN SIRDAR (No. 4) AND HADAN KHALASSEE (No. 5).

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Case of SHEIKH HAZAREE and others.

In a case of mutual affray the conviction and sentence passed by the sessions judge was upheld.

CRIME CHARGED.—1st count, wilful murder of Sheikh Haran of the second party; 2nd count, affray, wherein Pajoo Sirdar, one of the defendants on the side of the first party, and Sheikh Haran aforesaid, on the side of the second party, were wounded, and of which wound Sheikh Haran died on the same day; 3rd count, accomplices to the above offence.

Committing Officer, S. Z. Hossein, deputy magistrate of Manickgunge, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 4th February 1852.

Remarks by the sessions judge.—" The following are the circumstances of the case as gathered from the record :—A dispute appears to have existed for some time past between one Bishennath Sen, the ostensible proprietor by purchase of a four-annas share of mouza Dergaon, and Mr. Wise, of Dacca, regarding the Luleetgunge bazar and adjoining lands on which his (Mr. Wise's) Manickgunge indigo factory stands; the former claiming the land and bazar as appertaining to his purchased estate, mouza Dergaon, and the latter maintaining that the land on which the bazar and factory stand is his under a *meruss* tenure. The affray took place on the 15th of August last, and on the same day information was lodged by one Aradhun, styling himself a servant of Mr. Wise, and Hurrymohun Singh, a dependant of Bishennath Sen; the former stating that *latteeals* on the part of Redoykishen Sen (it is not quite clear that Bishennath Sen is the *real* proprietor of Dergaon) had been seizing and carrying off his master's *ryots*, and that on being remonstrated with, they had assaulted and wounded Pajoo and Sheikh Jhugoree, (prisoners Nos. 2 and 3) and carried off one Nobbin Boonah. The latter complained that one Muddun Gangolee had, with a large body of men, attacked Bishennath Sen's cutcherry, and beaten and wounded his people, and that one of them, Sheikh Haran, was dying from the effect of the wound he had received.

" The eye-witnesses, eight in number, depose to the affray having taken place; to the prisoners Nos. 1, 2, 3, and 4, on the part of the factory, and No. 5, on the part of Bishennath Sen, having been actually engaged in it, and most of them depose

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to Sheikh Hazaree (No. 1), having inflicted the wound which caused Sheikh Haran's death. It is shown by the evidence of the witnesses to the inquest, and the deposition of the sub-assistant surgeon, that Sheikh Haran received a wound from a *soolfee*, or some such weapon, in his right side, injuring the liver and stomach, which caused his death.

"The prisoner Sheikh Hazaree (No. 1), denies the charge; states that he was not in the employ of Mr. Wise, and further that he was lying ill at his father-in-law's at Hemrojpore on the day of the affray; but the plea of *alibi* is unsupported, I may say contradicted, for Bholanath Chuckerbutty, one of the witnesses called by this prisoner, who is the gomashta of the factory, states that he was at the factory in the morning of the day on which the affray occurred. The prisoners Nos. 2 and 3 deny, and urge that they were beaten by the opposite party. No. 4 pleads an *alibi*, but calls no witnesses in proof of it. No. 5 states that he was in the employ of Bishennath Sen; that he merely remonstrated with the opposite party when they attacked the cutcherry.

"This case is referred on two grounds, *first*, because I dissent from the *futwa* in regard to the prisoner Hadan, and *secondly*, because I consider the prisoner Shiekh Hazaree deserving of a more severe sentence than I am competent to pass.

"The *futwa* justifies the conduct of Hadan Khalassee, as protecting his master's property, and acquits him. From this finding I dissent; for I do not credit that part of the evidence which refers to the attack on the cutcherry. I have no doubt of the affray having occurred in its immediate vicinity; but I consider it to have arisen out of the seizure of certain *ryots* by one party, and the attempted rescue of them by the other; but even admitting it to have been shown that either party were the aggressors, it will not take the case out of the category of mutual affray. (*See* Nizamut Reports, vol. II. page 339.)

"With regard to the prisoner (No. 1) Sheikh Hazaree, though the witnesses generally depose to his having inflicted upon deceased the wound which caused his death, still there are slight discrepancies in their statements on this point, and taking into consideration the difficulty, in cases of mutual affray, of seeing by what particular individual a death-blow may have been struck, I would only convict him of affray attended with homicide; but the prisoner appears to be, by profession, a *latteeal*, for the foujdaree record shows that only the month before this affray, he was released from jail, wherein he had been undergoing a sentence of five (5) years' imprisonment, in another case of affray attended with loss of life. I would recommended that the prisoner Sheikh Hazaree (No. 1) be sentenced to fourteen (14) years' imprisonment in banishment, with labor and irons, and the

remaining prisoners Nos. 3, 4 and 5, to five (5) years' imprisonment with labor in irons.

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"It is by no means creditable to the deputy magistrate, that this affray should have been allowed to take place in the immediate vicinity (within I believe three hundred yards) of the police thanna and his own cutcherry. Abundant warning appears to have been given to him of the likelihood of such occurrence. He was on the spot, and could have ascertained in half an hour with which party possession of the lands in dispute lay; and he should have maintained and protected such party in possession until the question of right might have been disposed of in the civil court."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I entirely concur in the sessions judge's remarks on this trial. The affray occurred close to the police thanna and the deputy magistrate's cutcherry; and there is much reason to believe that both parties were not unprepared to use force in pursuance of their purposes. Disputes had existed for some time; the zemindar was persisting in his endeavour to get possession of the bazar, and the indigo planter, in his, to resist it; and had proper steps been taken by the deputy magistrate, this serious affray might, in my opinion, have been prevented. The sessions judge will forward a copy of these remarks to the superintendent of police, in order to ensure a strict inquiry into circumstances so discreditable to the police.

"The witnesses in this case are not fair and impartial persons. Those on the side of the zemindar support his statement, and those on the side of the planter, in like manner, adopt his version of the affair; but it may be gleaned, from their testimony and the report of the police officer, that the affray originated in the zemindar's people seizing and carrying off a female *ryot* of the bazar on the pretext of her not paying her rent. The factory people rushed out of the factory to rescue her, and were met by the zemindar's people, who sallied out of the cutcherry, both buildings being close at hand, and a fight ensued in which the deceased, a servant of the zemindar, was killed, and the prisoners Nos. 2 and 3, on the part of the planter, were wounded. The zemindar's people appear to have been the aggressors; but it was highly criminal on the part of the factory people in resisting the unlawful acts of the other side by force. I need scarcely add I entirely agree with the sessions judge in dissenting from the *futwa* of the law officer, who has, in my opinion, taken a very one-sided view of the case.

"The evidence to the prisoner Hazaree being the person who inflicted the wound on the deceased, which caused his death, is discordant; and I give him the benefit of the doubt which it creates; but it is clearly established that he and the other pri-

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soners took an active part in the affray. The prisoners Nos. 2, 3 and 5 admit their presence, though they deny that they aided in the violence. The prisoners Nos. 1 and 4 plead *alibis;* but their witnesses have altogether failed to prove their pleas. The convictions are good; and I confirm the sentences which the sessions judge recommends should be passed on the prisoners. No. 1, who is a *latteeal* by profession, and was a leader in the affray, is accordingly sentenced to fourteen (14) years' imprisonment with labor and in irons in banishment, and the other prisoners to five (5) years' imprisonment each, with labor and in irons."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT
versus
MUSST. KONCHINI.

1852. April 8. Case of MUSST. KONCHINI.

Although the charge of exposing her infant, with intent to destroy it, was fully established against the prisoner, yet in the absence of proof that the exposure led to its death, for it was quickly found and taken care of by other parties, she was sentenced to seven years' imprisonment with labor.

CRIME CHARGED.—1st count, throwing her new-born infant into a certain *jungle*, with a view to its destruction; 2nd count, abandonment of said infant, thereby causing its death.

Committing Officer, Mr. W. Brown, deputy magistrate of Bhudrück.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 10th March 1852.

Remarks by the sessions judge.—"The particulars of this case are briefly these:—At about noon, on Sunday the 4th of January, the prisoner, Musst. Konchini, being taken in labor, went into the *jungle* near to her house, and there gave birth to a male child, which she left behind her, and went back to her house, and shortly afterwards Dursun Jenna, the witness No. 10, having gone into the *jungle* in search of fruit or berries, fell in with the child, and gave information to the neighbouring people, who also went to the spot and saw the child, with the navel string attached, lying in the *jungle*, and not knowing at that time who was the mother of the child, Bhojun Mullick, witness No. 15, who was childless, said he would adopt it, and for that purpose took it to his house, where he and his wife took care of it and fed it, but it died the following morning. It also appears that the prisoner, the mother of the child, was discovered by the chowkeedar the same afternoon, but she objected to take charge of her child, because it had been taken to the house of a *Pán* and had lost caste.

"The prisoner confessed before the police and deputy magistrate, stating that she left the child in the *jungle*, either that it might die, or that some person might take it away, and care for it.

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"Before this court the prisoner denied exposing the child with the view to cause its death, and said that she intended to go and take it away from the *jungle*, where it was born, after fetching some clothes from her house; but in the meantime some one carried it away. She further stated, that if she had intended to cause its death, she would have killed it at once.

"The confessions of the prisoner both before the police and the deputy magistrate were proved by the attesting witnesses to have been voluntarily made.

"The *futwa* of the law officer convicts the prisoner on her own confessions, and the fact of the child having been found in the *jungle*; of throwing her new-born infant into the *jungle* with the view to cause its death, and declares her liable to *akoobut*; and concurring in her conviction, I feel myself bound, with reference to the circumstance of the child's death taking place the following morning, and the prisoner's having objected, whether of her own free-will or at the instigation of others, to take charge of her child after it was rescued from the *jungle*; because it had been taken to the house of a *Pán*, or person of low caste, to recommend that she be imprisoned for life with labor suited to her sex."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner gave birth to a child in the *jungle* behind her house and left it there. The prisoner's confessions before the police and magistrate, which are to the effect that she abandoned it, in order that it might die, or that some person might find it, and bring it up, have been duly proved. Her exposing the child in a *jungle* is significant of her intention to destroy it, and this offence is fully established against her, but there is no proof that the exposure either caused or accelerated the child's death; it was found soon after it was abandoned, and fed and cared for, and it would appear, from the evidence of the persons who adopted it, that it died suddenly the following morning. It was the prejudice of caste, so deep-rooted in the minds of the natives of Cuttack, and not a want of maternal affection, that induced the mother to refuse to take charge of her child. I have known instances of a person seizing a robber in the act of stealing his property and setting him free, lest it should be known that he had been polluted by coming in contact with a person of low caste. I do not think the circumstance of this ignorant young woman not taking charge of the child should, therefore, be held to aggravate her offence. I sentence her to seven (7) years' imprisonment with labor suited to her sex.

"I beg to remark, for the magistrate's information, that the second charge is vaguely worded. If the abandonment of the infant caused its death, the prisoner should have been charged with wilful murder."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

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The Nizamut Adawlut, in concurrence with the recommendation of the sessions judge, sentenced the prisoner to seven years' imprisonment with labor, on conviction of exposing her newly-born infant, with intent to destroy it.

CRIME CHARGED.—Exposing her newly-born infant in an unfrequented place with intent to cause its death.

Committing Officer, Mr. W. M. Beaufort, officiating magistrate of Central Division, Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 23rd February 1852.

Remarks by the sessions judge.—"On the afternoon of Wednesday, the 14th of January, (erroneously stated in the Mofussil and foujdaree proceedings to be the 13th January,) while Laloo Dass, witness No. 8, was tending the grazing of his cattle in the Raipoor *bheel*, he heard the cries of an infant in the grass *jungle*, and on going to the spot whence they issued, he discovered a female child, about 8 or 10 days' old, and he then called to Dytarry Maintee, whom he saw at some distance from the spot, and told him of his discovery, and the said Dytarry Maintee called Gungye Mullick, the chowkeedar of Raipoor, who took the child home and fed it, and made inquiry after the prisoner, Mustt. Gokhnee, whom he knew to have been pregnant; and having learned from Kannye Mullick, the chowkeedar of Tunaroo, where she had resided for some time, that she had given birth to a child, he, after some little search, found her at her father's house at mouza Bolputna, pergunnah Lakhund, and took her with him and made over the child to her.

"The prisoner admitted, both before the police and the magistrate, that having been turned out of her father-in-law's house, as well as those of Kundroo Naik, the father of her child, and other persons residing at Tunaroo, she resolved to go to her father's, and fearing that he also would refuse to receive her with the child, she, on Wednesday, the day the child was found, while proceeding to her father's, placed it in the grass *jungle* adjoining the path through the *bheel*, in order that it might die, and went and told her father that the child had died, and that she had thrown it away; but Kannye Mullick, chowkeedar, and others came the following morning and took her away, and made over the child to her, and it survived till the night of the 29th of January, when it died as it was being sent with its mother from the jail to the hospital.

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"The officiating civil surgeon, whose deposition will be found with the record of the case, stated that it was a sickly prematurely-born child, and that its death was caused either from want of nourishment or natural weakness; and though the exposure must have hastened its death, he thought it very probable that it would have died shortly, independent of the exposure.

"The confessions of the prisoner were proved by the subscribing witnesses to have been voluntarily made, and before this court she also acknowledged having abandoned her child.

"The *futwa* of the law officer convicts the prisoner on her own confessions of having exposed her infant in an unfrequented place, with the intent to cause its death, and concurring in her conviction, I beg to recommend, with reference to the doubt which may reasonably be entertained, whether the child died from the exposure or from natural weakness of its constitution, that she be sentenced to seven (7) years' imprisonment with labor suited to her sex."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"To judge of the prisoner's intentions we must look to her acts. She exposed the new-born child in a grass *jungle*, where had it not been discovered, it must have died from want of nourishment; she confessed before the darogah and the magistrate that she wished to destroy it. The guilt of the prisoner is, therefore, clearly proved, and I sentence her to seven (7) years' imprisonment with labor suited to her sex, as recommended by the sessions judge."

PRESENT:

SIR ROBERT BARLOW, BART., *Judge.*

SHEIKH PUNNAOOLLAH

versus

SREEDHUR TOOTEY KYBURTO, ALIAS SREERAM, ALIAS KORARAM BAGDEE (No. 1), BUNGSEE DHARAH PUNDIT (No. 2), OTTUM BAGDEE CHOWKEEDAR (No. 3) AND KASSEE ROY BAGDEE (No. 4).

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Case of SREEDHUR TOOTEY KYBURTO, *alias* SREERAM, *alias* KORARAM BAGDEE and others.

The conviction by the sessions court of the prisoners charged with dacoity, upheld by the Nizamut Adawlut in appeal.

CRIME CHARGED.—Dacoity attended with wounding in the house of the prosecutor on the night of the 26th July 1851, corresponding with 11th Sawun 1258 B. S., and plundering therefrom property to the amount of rupees 1,453-3-6.

CRIME ESTABLISHED.—Dacoity attended with slight wounding.

Committing Officer, Baboo Issur Chunder Ghosaul, deputy magistrate of Jahanabad, Hooghly.

Tried before Mr. C. Steer, officiating sessions judge of Hooghly, on the 14th November 1851.

Remarks by the officiating sessions judge.—"The house of the prosecutor in Jaie Singh Chuck was attacked by a gang of dacoits in the middle of the night of the 26th July last. Twelve men slept that night in his house, or about his premises. Of these, witness No. 3, the village chowkeedar, and witnesses Nos. 4 and and 5, Muddun Bagdee and Guddadhur Bagdee, were caught by the dacoits and tied up. The rest of the household made their escape.

"The prosecutor himself ran out by a door leading to the south and raised the villagers in that direction, while his brother, Noimuddeen, witness No. 1, did the same with the villagers living to the north. Two forces were thus collected, one on the north, and the other on the south of the prosecutor's house, and their numbers were quite enough, if their courage had been equal, to have made short work of the dacoits. They judged it prudent, however, to let the dacoits leave the house, and then the two forces uniting, gave chase. The witness No. 3 was wounded while so engaged and disabled; but the rest of the villagers succeeded in knocking over two of the dacoits, prisoners Nos. 1 and 2; and their gang then separated. Some fled one way and some another; and the villagers gave up the chase.

"The prisoners Ottum (No 3) and Kassee (No. 4) were also recognized by the three witnesses who had been tied up by the dacoits, and by the prosecutor and his brother Noimuddeen; Ottum and Kassee were also named in both the confessions of the captured dacoits.

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Case of SREEDHUR TOOREY KY-BURT, alias SREERAM alias KORARAM BAGDEE and oth

"Koraram Bagdee, (prisoner No. 1,) who first called himself Sreedhur, inhabitant of Bykuntpore, and then Sreeram, and who, after a great deal of difficulty, the darogah ascertained to be Koraram of Neemdanga, confessed before the police and before the magistrate, and among others he named as his accomplices the prisoners Bungsee, Ottum and Kassee.

Bungsee made a similar confession, and named as his associates, Koraram, Ottum and Kassee.

"Ottum and Kassee both denied; and the prisoners Koraram and Kasee also retracted their confessions when called upon for their defence at the sessions.

"Defence of prisoner No. 1, Koraram, is that he was going to his relative's house in Sooragachee to get rice to transplant, and was caught by a Mussulman at 5 o'clock in the morning on Matpore *mat*, north of Jaie Singh Chuck; that he met while going for the plants, one Praim Chand Bagdee, to whom he told the business he was going upon. He names this person as his witness to this fact, and names two others as witnesses to good character.

"Prisoner No. 2, Bungsee, pleads that he passed the night of the 11th Sawun, in the house of one Petumber in Satmasa; that he left early the next morning, and was apprehended on the road. He names Petumber and Jetu as his witnesses to this fact; and he names witnesses to character.

"Defence of prisoner No. 3, Ottum, is that he and the prosecutor's witnesses have had frequent disputes about the fish of a tank, on the banks of which the witnesses reside; that they steal his fish. The prisoner has two cases of quarrel with the prosecutor. He once cut down a *peepul* tree belonging to the prisoner; and the prisoner one day caught the prosecutor in the house of a Bagdee woman and exposed him. He pleads further that he was in his own village the whole of the night of the 11th Sawun.

"Prisoner No. 4, Kassee, father-in-law of Ottum, makes a similar defence to that of his son-in-law, and names witnesses that he was at his own house while the dacoity was going on.

"Of Koraram's witnesses, his brother, witness No. 25, says, Koraram is a good man. Witness No. 26 is absent, and witness No. 27, Praim Chand, says that he did not meet the prisoner any where on the morning of the 12th Sawun.

"Bungsee's witnesses to character say, he has recently taken up his residence in their village, and they are not able to speak therefore of his character. The witnesses to his leaving the house of Petumber early on the 12th Sawun, depose that he did nothing of the sort.

"Three witnesses of Ottum say that they were woke up by him at various times during the night of the 11th Sawun. This

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Case of SREEDHUR TOOTEY KYBURTO, *alias* SREERAM, *alias* KORARAM BAGDEE and others.

is very possible, and yet Ottum may have been in the dacoity, as his *chowkee* is only half a *coss* from the prosecutor's house. A burkundauz, whom Ottum names to prove that he saw him on his *chowkee* on the night of the 11th Sawun, says, that he never went into Ottum's village at all that night,

" Kassee's two witnesses, one his relation, and the other a villager, depose that they saw Kassee in his own house while the dacoity was going on; but I discredit their evidence, as he could not have been at two places at the same time; and it is proved by the clearest testimony that he was one of the dacoits in company with the two prisoners who were captured close to the spot.

" Regarding the evidence and proof complete against all four prisoners, Ottum, as being a chowkeedar at the time, was sentenced to ten (10) years, and the other three to eight (8) years each, the charge established being dacoity with slight wounding.

" Two other prisoners were released."

Remarks by the Nizamut Adawlut.—(Present: Sir Robert Barlow, Bart.)—" The prisoners Nos. 1, 2 and 4 only have appealed; but the whole case has been under review. The prisoners Nos. 1 and 2 were seized on the spot by some of the villagers, and confessed in the Mofussil, as did No. 1 also in the foujdaree court. The prisoners Nos. 3 and 4 were recognized by the prosecutor and by Noimuddeen, who opposed the dacoits in their attempts to enter the house. The prisoners' answers in defence, as recorded by the sessions judge, elicit nothing in their favor. The witnesses for Nos. 1 and 2 prisoners do not support their pleas. Those for prisoner No. 3 state, he was on watch at Alaidgram: this might be the village in which prosecutor resides, Jaie Singh Chuck being close by. The prisoner No. 4 has also pleaded *alibi*. The evidence, however, he has adduced, is not satisfactory, and is discredited by the judge. I see no reason to interfere with his sentences."

PRESENT:

J. R. COLVIN, Esq., *Judge*.

MUSST. SUNEECHUREE AND CHOONKOO

versus

KUMUL (No. 16), POKHUN (No. 17) AND FUKEERA (No. 18, APPELLANT).

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Case of FUKEERA.

A prisoner acquitted who was improperly tried, on a charge of assault of a party, in the same commitment with two other persons, who were tried for the culpable homicide of that party, by a separate and subsequent act of violence. The charge of mere assault, relating to a previous distinct act from that which caused the death of the deceased, was one cognizable by the magistrate's court, upon the complaint of the party himself. It was not one to be prosecuted by his heirs after his death.

CRIME CHARGED.—Murder of Kehar.

CRIME ESTABLISHED.—Nos. 16 and 17, culpable homicide of Kehar, deceased; No. 18, assault on Kehar, deceased.

Committing Officer, Mr. G. G. Balfour, magistrate of Monghyr.

Tried before Mr. Francis Lowth, officiating sessions judge of Bhaugulpore, on the 16th January 1852.

Remarks by the sessions judge.—"The prisoners pleaded 'not 'guilty.' The particulars of this case are the following:—The prisoner Fukeera had given the deceased four annas to purchase a kid, but on the money being returned, on the plea that an animal like that required could not be found, became very angry and abusive, and struck the deceased several blows, ere the neighbours could interfere and separate them; this occurred about 3 P. M., on the 3rd October 1851, or Assin 1259 F. S. The deceased then went to the farmer of the village to complain, and on his way back about 5 P. M. was met by the other prisoners Kumul and Pokhun and again maltreated, blows with their fists and kicks being dealt with such effect that he then and there expired.

"Before the police and magistrate, the prisoners Kumul and Pokhun recorded confessions to the effect that they had struck the deceased; the former also admitted that he fell and died shortly after, in consequence of the blows received; the latter, however, urged, that the deceased being subject to epileptic fits, his death had been caused thereby: these confessions were read over and duly attested by the subscribing witnesses.

"The *sooruthal* of the police, dated the 3rd October, showing the deceased to have been about 25 years of age, and to have received blows over the right eye and on the right side of the head, and those parts as well as the body generally to have been much swollen, was read over and duly attested by the subscribing witnesses.

"The body being in a very decomposed state on its reaching the sudder station, no examination could be made by the medical officer; Dr. Collins' evidence therefore was not recorded.

"To the assault of the deceased by Fukeera alone on the first occasion, as well as his subsequent maltreatment by the other two prisoners in concert the evidence adduced on the part of the prosecution was full and conclusive.

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"Before this court all the prisoners denied the charges preferred, the two former also repudiating their confessions before the police, and in the foujdaree court, Kumul and Fukeera also pleaded that the case had been got up against them out of spite in consequence of some quarrel about a garden and fish pond, respecting which they declared themselves to have had an interest, and to have been opposed by the deceased, and all the witnesses for the prosecution; Pokhun and Fukeera also pleaded *alibis*, and declared the police darogah to have instigated their prosecution, but on no one point was the evidence of their witnesses sufficient or exculpatory.

"The jury returned a verdict of guilty of culpable homicide against the prisoners Kumul, No. 16 and Pokhun, No. 17, and convicted the prisoner Fukeera, No. 18, of assault.

"As the maltreatment of the deceased by the prisoners Nos. 16 and 17 was clearly proved to have been brought about in consequence of the previous dispute between the deceased and Fukeera, and considering the latter prisoner guilty of the assault forming the basis of the charge, though not present at the time or taking an active part with the other prisoners on the occasion when the deceased met his death, I fully concurred in the verdict, and sentenced the prisoners as shown in the statement."

Sentence passed by the lower court.—Nos. 16 and 17 each to three (3) years' imprisonment without irons, and to pay a fine of rupees seventy-five (75) on or before the 16th February 1852, or, in default of payment, to labor until the fine be paid or the term of sentence expire. No. 18, one (1) year's imprisonment without irons and to pay a fine of rupees fifty (50) on or before the 16th February 1852, or, in default of payment, to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"The prisoner Fukeera ought evidently, for the reasons stated in the Register's letter,* No. 303, of the 5th ultimo, not to have been included in this commitment. He is acquitted, as the charge for the mere assault could not, after the death of Kehar from the effects of the separate and subsequent violence by the two other prisoners, be prosecuted against him by Kehar's heirs, and he must be forthwith released."

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* *Extract from letter, No. 303, dated 5th March* 1852, *to Sessions Judge of Bhaugulpore.*

"The Court observe, with reference to the case noted in the margin, that, the act of the prisoner Fukeera being quite distinct from that of the prisoners Kumul and Pokhun which alone led to the death of Kehar, he should not have been committed for trial with them. His offence was cognizable by the magistrate only, upon the complaint of Kehar: He was not implicated in Kehar's death, and should not have been sentenced by the late sessions judge."

Kumul and others, Nos. 16 to 18 of statement No. 6.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

KOONJ BEHAREE ROY, RAJPOOT

versus

JODHUN TELI (No. 1), KHEDHUN TELI (No. 2) AND JEETUN GOALA (No. 3).

1852. April 10.

Case of Jodhun Teli and others.

Prisoners convicted of culpable homicide, in having beaten to death a person supposed to have come to steal in their field, sentenced to imprisonment with labor and irons for seven years.

CRIME CHARGED.—Murder of Miterjeet Singh.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 25th February 1852.

Remarks by the sessions judge.—" Musst. Mungree (witness No. 7.) was the deceased's concubine, and they had been living together for some time past in a dwelling, which the deceased had put up on some land, the cultivation of which he had recently taken, within Titaiee Beega, where no one else resided besides Sohiaee Goala (witness No. 21) and Chinah Goala (witness No. 27), witnesses called for the defence. Soolunda, Bunee Beega and Pultoo Beega, are villages in the neighbourhood some distance off. The deceased's connexions live in the first-named village, and he appears also to have held cultivation in the three first-named villages. The prisoner's two brothers and their servant are residents of Pultoo Beega. The new cultivation taken by the deceased in Titaiee Beega abutted cultivation held by the prisoners in Pultoo Beega. The deceased had also obtained the cultivation of a 10 kutha lot, known as Simbhoo Dutt's jageer, heretofore cultivated by Jodhun Teli (prisoner No. 1).

" Musst. Mungree deposes—that during the night of 11th December last, the deceased was awoke by Jodhun Teli, prisoner No. 1, calling out to him to look after his field, on which he got up and went out. She heard the deceased crying out from the field, when she followed, and saw the three prisoners, after having beaten the deceased senseless, with clubs and an iron-bound club, dragging him away. She immediately started for the thanna, where, some eight to ten miles distant, she is said to have arrived early the next morning. Her testimony is so far verified by Khooblol Burkundauz's, (witness No. 30,) letter of the same date, the 12th idem, and his deposition before this court, from which it appears he found the deceased lying in a helpless state on a *charpaee* before Jodhun Teli's (prisoner No. 1) house, but he either did not inquire or does not choose to tell the real circumstances under which he found him there. He then took charge of the deceased, but it was not until the 15th idem, that the darogah, finding the deceased continued speechless, forwarded him to the station.

" The Mofussil inquest describes the deceased's person as having shown seven external marks of injuries extending over

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every part of his body. Dr. Diaper deposes—'That he was 'admitted into hospital on 16th December last, delirious from 'the injuries he had received. The only wound he had sustained 'was a perpendicular contused one, about three inches long, in 'the centre of the forehead, but the head generally was one 'mass of contusion, and he died in a few hours after admission 'in great suffering.' The autopsy showed 'great extravasation 'of blood throughout the space generally between the scalp and 'skull, on removing which the bone corresponding with the 'right temple was literally broken to pieces. The brain itself 'also was enormously conjested with the rupture of its large 'vessels.' He attributed such results 'wholly to the *number* of 'blows the deceased had received on each side of his head, and '*not* to *the* wound on the forehead, which did not injure the 'skull *in any way*.'

"Before the law officer, on the same date, in the presence of Tikharam (witness No. 8), Titaice (witness No. 9), the deceased had incoherently deposed that Jodhun Teli (prisoner No. 1), alone had beaten him out of spite, the particulars of which he could not explain when questioned.

"Baljee Singh (witness No. 1) and Surubjeet Singh (witness No. 2), connexions of the deceased, the latter his brother, are the only forthcoming eye-witnesses of the transaction, besides Musst. Mungree. They depose they were watching their crops some distance off, and running up on hearing the deceased's cries, found the three prisoners beating the deceased, and on their attempting to interfere, being threatened, and as Surubjeet says, both before the magistrate and this court, being himself hit by Khedhun Teli (prisoner No. 2), they went away.

"The prisoners pleading 'not guilty,' pretend that Khedhun Teli was watching their crops, when the deceased, accompanied by the eye-witnesses Baljee and Surubjeet and another thief, commenced stealing the crops. Khedhun Teli set up the alarm, and Jodhun Teli and Jeetun Goala came to his assistance. The deceased was seized and the other thieves escaped. All three, both before the police and magistrate, attempt to account for the deceased's having come by his death consequent on a blow aimed at Khedhun Teli by Surubjeet striking the deceased; but before this court Khedhun Teli knew nothing about it, though Jeetun Goala repeated the original story. They called several witnesses both before the magistrate and this court. Several knew nothing, and the utmost testimony of the remainder, including witness No. 24 and witness No. 27, favorably disposed towards the prisoners, amounted to mere hearsay, of the deceased having been seized by them as a thief stealing their crops.

"The *futwa* of the law officer finding the crime not to amount to wilful murder, convicts the three prisoners of culpable homi-

cide, and declares them liable to punishment in a high degree for the price of blood by *deeyut mooghulzah*.

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Case of Jodhun Teli and others.

"As noticed in the darogah's final report, 18th December, No. 14, had the deceased been apprehended as a thief, the prisoners had continued culpably silent regarding it until apprehended. From the deceased's having been found, in the helpless state in which he died, before Jodhun Teli's house, by the burkundauz Khooblol. (witness No. 30,) the prisoners had doubtless attempted to screen themselves by endeavouring to make out the occurrence as one of theft, but the concoction failed, as neither villagers nor any one connected with it would support it, further than by mere hearsay. The deceased's position as a cultivator was just as respectable as that of the prisoners themselves, and it is just as improbable that he would turn thief as that they should. This is sufficiently made out by the acknowledgments of their own witnesses. They allude to the deceased's having been incarcerated six months for theft, but so many years ago, as if purposely to place it beyond the test of record, and unsupported on any other testimony, than that of Futteh Goala (witness No. 11), chowkeedar under all the circumstances of the case most probably [illegible] the occasion. The cruel beating the deceased [illegible], as proved by the autopsy, was too brutal even for thief [illegible]. The 'head one mass of contusion,' and the bed, covered with [illegible], bespeaks an unfortunate victim, helpless in the hands of [illegible], satisfied with nothing short of taking [illegible] life. There is no other evidence as to the origin of the [illegible] than that of Mussst. Mungree, which is, in itself, [illegible]. Her deposition before the magistrate and this court [illegible] the deceased was called out of his house by prisoner No. [illegible], is at variance to her thanna information, which, meagre in itself, [illegible] out the occurrence to have originated in the prisoners' [illegible] the deceased's crops. It is highly improbable that the prisoners would have called the deceased out of his bed, [illegible] the ill-feeling between them that the deceased would have answered it by going. Whether the prisoners were plundering the deceased's field, or the deceased theirs, or whatever gave rise to the occurrence, is a mystery, though under every circumstance of the case and the worthless defence set up by the prisoners, they are fairly responsible for the merciless treatment which caused the deceased's death, under circumstances strongly warranting the inference of its having been perpetrated out of revenge. The facts stated in the 1st paragraph of this report are substantiated by the witnesses for the defence as well as the prosecution. Doda Singh (witness No. 10), for the defence, was the former cultivator of the cultivation taken by the deceased, and admits that he must have been a fearless man to have taken up such a position. In-

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dependent, therefore, of the cultivators regarding the deceased as an interloper, and from his daring position, doubtless a very troublesome one, the cultivation thus nearly taken by him adjoined that of the prisoners in their own village of Pultoo Beega, together with his having deprived them of the jageer cultivation, and his continued residence on the spot itself, as may be inferred by the very questionable testimony of his two solitary neighbours (witnesses Nos. 24 and 27), called for the defence, must have always been a grievance to the bordering cultivators generally, and the prisoners in particular, and to which alone in the reckless spirit of agrarian revenge, under such circumstances, such an occurrence seems to me attributable. Thus viewing the prosecution, I concur in convicting the prisoners of aggravated culpable homicide extending beyond the power of punishment vested in this court, and to recommend their each being sentenced to fourteen (14) years' imprisonment with labor and irons in banishment."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"As noticed by the sessions judge the information of Musst. Mungree respecting the origin and cause of the beating, which caused the deceased's death, is not to be depended upon. To the darogah she charged Nuncoo and Alee Kobeer, as well as the prisoners with the offence, and the latter with robbing her of her necklace. To the magistrate she deposed that the three prisoners beat and dragged the deceased to Nuncoo Mya and Alee Kobeer, the *maliks* of the village.

"The two eye-witnesses depose that they were attracted to the spot by the cries of thief. The burkundauz, deputed to the spot, found the wounded man at the prisoner Jodhun's door. It is not probable that he would have brought and allowed him to remain there if he had beat him in some ordinary quarrel in the paddy fields. The deceased stated, that the beating took place at twelve o'clock *in the day*, which it certainly did not. His alteration of the time from night to day, has the appearance of his having been ashamed to admit the real facts. All these circumstances, in the absence of any better reason being given, lead to the conclusion, that the beating was in consequence of deceased being caught in an attempt to steal. However, allowing the prisoners the benefit of this supposition, the beating was out of all proportion to the provocation. From the assistant surgeon's deposition, it must have been barbarous and cruel. The guilt of the prisoners is established by the evidence of the two eye-witnesses; and this is corroborated in some measure by their own admissions.

"I concur in convicting them of aggravated culpable homicide, and sentence them to seven (7) years' imprisonment, with labor in irons."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GUNGA, RITBURN AND HOSSEINI

versus

MUNNOHUR (No 5), THUKOORI (No. 6), KASHEE (No. 7), AKUL (No. 8), JETA (No. 9), SIDHU (No. 10), JUGMOHUN (No. 11), BULAKI (No. 12) AND GAJJU SINGH (No. 13).

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Case of MUNNOHUR and others.

In a case of culpable homicide and assault, provoked by driving buffaloes to graze in a crop, which one of the prisoners believed to be his, sentence of five years' imprisonment upon that prisoner, and of seven years' on his accomplices, passed.

CRIME CHARGED.—No. 5, 1st count, wilful murder of Sumeri; 2nd count, making and being present, aiding and abetting in a riot attended with the wilful murder of Sumeri, and riotous assault on Gunga, Ritburn and Hosseini, prosecutors. Nos. 6 to 12, 1st count, accessaries before the fact in the said murder and riot; 2nd count, accomplices, being present, aiding and abetting in the said murder and riot. No. 13, accomplice being present aiding and abetting in the said murder and riot, and ordering the assault aforesaid upon the prosecutors.

Committing Officer, Mr. W. F. Tucker, officiating magistrate of Patna.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 27th February 1852.

Remarks by the sessions judge.—" The reason of this reference is, that concurring in the finding of the *futwa* as to the guilt of the prisoners, I consider them deserving of a severer sentence than the sessions court is competent to pass.

" The circumstances of the case are as follows :—

" It appears from the testimony of the prosecutors, and some of the witnesses on their side, that one Moonshee Rahut Alee, one of the proprietors of Jumset, of which the village of Mutheea is an adjunct, disputed the right of another proprietor named Nujumooddeen to a three-pie share, for which he had obtained a decree, and they complain of the violence to which they had become liable, according as they recognized the rights of one or other of the disputants. Respecting the facts of the case they have deposed in statements, for the most part remarkably clear, circumstantial and consistent, that Ritburn, a youth of twenty years of age, or less, was set upon by prisoner Bulaki, and a man named Luchmun as he was grazing some buffaloes upon the produce of a field purchased by his maternal uncle, the deceased Sumeri, who as well as Gunga and Hosseini, prosecutors, and some of the witnesses were similarly assailed by the said Bulaki and Luchmun, and by the rest of the prisoners and others, who had riotously assembled armed with *lattees* and *gorasas*, as one after the other they repaired to

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the spot, either to protect their relations or to keep the peace. All join in saying that the prisoner Munnohur was armed with a *gorasa*, with which, or as some say with the handle of it, he struck and felled the deceased, who was left by the rioters insensible on the field from that and other blows which he received.

"The evidence of Mr. Dicken, the civil surgeon, shows that Sumeri died in hospital in consequence of the contused wounds and injuries he had sustained which induced tetanus; but the witness entertained little hope of the deceased's recovery, when he admitted him into hospital, for besides fractures of the arms, one a compound one, he had two severe contusions on the head, which was also fractured, and he thought that the injuries last-mentioned, inflicted probably with a club or iron-bound blunt instrument, would have proved fatal, though tetanus had not supervened.

"The attack seems to have been most wanton and unprovoked, and no other motive is discoverable from the evidence than that the persons assailed paid the rent of the share to the party to whom it was decreed. They therefore consider their assailants as in the pay of Moonshee Rahut Alee.

"The prisoners had scarcely a word to say in their defence further than pleading an *alibi*, so usually resorted to in cases in which the evidence to the facts is too strong to be met in any other way.

"Kashee, prisoner, said that he had interfered to prevent Gunga, prosecutor, from feeding down the field of another; Jeta and Sidhu, prisoners, that they had given evidence against Gunga in the suit of one Jajju against him, owing to which grudges they had been accused. None of these allegations was supported by any evidence.

"Indeed the witnesses cited by all except Thukoori, Jeta and Gajju Singh, disclaimed all knowledge of the prisoners, or, as in the cases of Bulaki and Jugmohun, were not examined by them on the pretext that the prosecutors had bought them over to their side.

"The witnesses of the three above-mentioned supported their pleas as to their being at other places, but they cannot be believed. The occasion of their meeting Gujju Singh, mentioned by his witnesses is most improbable. It is that two of them being together on a visit to Daoodpore, the other four on their way from their homes in different villages across the Ganges to the *haut* in Dinapore, met the prisoners, all on the same spot, at Daoodpore.

"The beating of the deceased, though cruel and savage in the extreme, was probably not intended to kill him; or the prisoner Munnohur would have struck him with the blade of his *gorasa*, a weapon capable of cutting his head off, instead of only fracturing the skull, so that murder is not proved.

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"The homicide, however, committed by evidently a number of desperate *latteeals* joining in a riotous assault, is as aggravated a one as could well be conceived, and calls for their repression by the severest sentence which the law allows in such cases.

"I do not see in the circumstances any indication of an expected opposition on the part of the parties assailed. It seems to me that the object in the first instance was to chastise Ritburn and Sumeri, considered to be refractory *ryots*, and that when others as obnoxious as themselves ran to their rescue, they were set upon by the rioters and beaten in a similar manner. For this reason, I directed the officiating magistrate to alter one of the charges from affray to *riot*, and otherwise revise the charges generally, which were loosely worded.

"I would recommend a sentence of at least fourteen (14) years' imprisonment with labor and irons in the case of Munnohur, to whose blows probably the deceased's death is attributable, and at least ten (10) years' imprisonment also with labor in irons in the case of the other prisoners."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The case does not appear to me to be one of so heinous and aggravated a nature as it has been characterized by the sessions judge. From the deposition to the magistrate of the deceased and the evidence of the lad Ritburn, it appears that the latter took buffaloes belonging to the deceased, who was his uncle, to feed in a *khesary* field. The deceased had bought the crop of this field from Bissonath, to whom it had been granted by the *amlah* of one partner in the estate, and he admitted that the *amlah* of the other sharer (Rahut Alee) asserted that he had granted it to the prisoner Thukoori. Thukoori, Bulaki, and Luchmun asked Ritburn what business he had to bring the buffaloes there; and they beat him. The deceased and some ten others prosecutors and witnesses, came up and interfered; but the deceased and some of his party got severely beaten by the opposite party. The head and arms of the deceased were fractured by blows which caused his death.

"The judge has stated in his 6th paragraph that the attack was wanton and unprovoked, and that no other motive is discoverable from the evidence than that the persons assailed paid rent of the share to the party to whom it was decreed. But from the statements above alluded to, it is obvious that the quarrel originated in Ritburn's driving cattle to graze in the standing crops of a field, which one of the prisoners considered his own. This was a very natural cause of provocation to a cultivator. Moreover, it is not to be supposed that the deceased and his friends, several of whom came up about the same time, protested in moderate terms at the beating of Ritburn.

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" There is nothing in the evidence to induce a belief that the prisoners are desperate *latteeals*, as they are characterized by the sessions judge in his 12th paragraph. They are, with the exception of Gajju, *ryots* of the same village as the prosecutors, and of the same class of persons. If any of them were armed with *gorasas*, they do not appear to have used the blades, for the deceased and the prosecutors had no incised wounds. The restraint which those who had such weapons in their hands must have exercised over their passion, to refrain from using them, is a circumstance much in their favor.

" It is proved that all the prisoners assaulted and beat the deceased and the prosecutors, and that the beating was the cause of death of the deceased. The beating was not with the intent of causing death, and therefore the *futwa* correctly finds the offence to be culpable homicide and not murder. That part of the evidence, which attempts to fix Munnohur with the guilt of striking the fatal blow, is not to be depended upon. When all the prisoners are said to have beat with *lattees*, or the handles of *gorasas*, and death is found to have been caused by a blow of some heavy instrument like a club, it is impossible to say with certainty who was the actual perpetrator of the homicide. The defence set up does not avail the prisoners.

" The guilt of aiding and abetting in the culpable homicide of Sumeri, and in a severe assault upon the prosecutors, has been clearly established against all the prisoners. I, however, consider that it was perpetrated under sudden provocation and without any premeditation. The provocation to Thukoori was the most direct. I therefore consider him deserving of less severe punishment than the others. They are sentenced to imprisonment for seven (7) years with labor and irons, and Thukoori to imprisonment for five years with labor and irons."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

GOPEE JENNA (No. 8), KEENOO PATUR (No. 9), KANOO DASS (No. 10), HARRO JENNA (No. 11), DAUM PATUR (No. 12), BHURRUT HOEE (No. 13), LOKEE BEHRA, ALIAS LOKHEE BARRICK (No. 14) AND PURKIT SINGH, ALIAS PURKIT JENNA (No. 15).

1852. April 12.

Case of GOPEE JENNA and others.

Convictions of dacoity confirmed on the evidence of two approvers, which was strongly corroborated by the confessions of the prisoners, and the circumstantial facts of the case.

The court remarked that approvers are not entitled to their absolute discharge until it be known whether they have fulfilled the conditions of their pardon, and in order to secure their attendance at the trial, the magistrate is justified in committing them to prison.

CRIME CHARGED.—Dacoity attended with arson, at the house of Kesub Patur, in mouza Jamrah, thanna Sagressur, zillah Midnapore, in which property to the value of rupees 0-6-3 was plundered on the 29th March 1851.

Committing Officer, Mr. W. J. Allen, magistrate of Balasore, Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 12th December 1851.

Remarks by the sessions judge.—" It is necessary to preface this report by stating that mouza Jamrah, where Kesub Patur, the individual whose house was attacked and burned by the dacoits, lives, is in the jurisdiction of thanna Sagressur, zillah Midnapore; but in consequence of the accompanying murder case, in which the prisoner killed was Bullub Jenna, chowkeedar, having been committed on the same night, by the same gang of dacoits, in the contiguous jurisdiction of thanna Moeshpore, in zillah Midnapore, as they were returning to their homes after the dacoity, and the parties concerned were apprehended by the police of the latter district, Mr. Allen, the magistrate, applied and obtained the authority of the Sudder Nizamut Adawlut to hold the trial of both cases at Balasore. And as the two cases are so intimately connected with one another, and the occurrence of the dacoity case, in consequence of its having been in the first place concealed, could never have been substantiated, had it not been for the proof afforded by the murder case, I request that they may be jointly considered and disposed of by the superior court.

" The two occurrences, the dacoity and murder, were, in the first instance, committed as one case by the magistrate; but having foreseen difficulty in thus trying them, as the *futwa* of the law officer was requisite in the murder case, and not in the dacoity case, I referred the question to the court, and was informed by their reply, No. 1003, of the 16th September last, that the trials should be held separately.

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" Kesub Patur, in whose house the dacoity was committed, on being questioned both by the police of thannas Sagressur and Moeshpore, most stoutly denied that any dacoity had taken place, and stated that his house and property had been accidentally burned, and it was not until he was examined a second time by the darogah of thanna Moeshpore, on the 12th April, that he was induced, after repeated questioning, to say '*that if* '*the dacoits confessed committing a dacoity in his house, and* '*said that the suff chuttai* or *mat and brass fish (found at* '*Raipore, where Bullub Jenna was killed,) were his, he charged* '*them with having done so, and the said articles might be his* '*property.*' And therefore, though he, on the 16th of April, when examined before the magistrate, deposed to the commission of the dacoity, and claimed the mat and brass fish as his property, very little reliance can be placed on his statement, and for proof of the occurrence we must look to the confessions of the prisoners and the general circumstances attending the case, rather than to the evidence, saving at all events, that of the two accomplices whom the magistrate admitted as witnesses under Section VII. Regulation I. of 1829, for the other witnesses, being residents of Jamrah, like Kesub Patur, their neighbour, in the first place concealed their knowledge of the dacoity, and the testimony subsequently given by them is anything but satisfactory or conclusive.

" The following is the manner in which the occurrence of the dacoity is reported to have been brought to light :

" On the 1st of April, while the darogah of Moeshpore was inquiring into the murder of Bullub Jenna at Raipore, Sahibram Jenna,* the chowkeedar of mouza Goonabasaon, (thanna Moeshpore), which is contiguous to Jamrah (thanna Sagressur), made his appearance, and stated that on Saturday, the 18th Cheyt 1258, corresponding with the 29th March 1851, at about two *ghurries* of the night, as he was patrolling the south portion of his village, he saw two persons sitting in the verandah of Jaunkee Patur's house, and being aware that he was absent, and that only his wife was at home, he asked them their names, and what they were doing there, when one of them said his name was Keenoo Patur, and that he formerly lived at Boodkoosmee, and at present at Sumputteeah in Jellasore, and the other that his name was Doorgee Dey of Untrooee, pergunnah Kumardur, and that they had been to bathe in the sea, and he, Doorgee Dey, being asked to Jaunkee Patur, intended remaining there for the night; that he, the chowkeedar, then went and called Sreedhur

* It appears from the deposition of Buggee Dulye, witness No. 3 in the murder case, that he, on the 31st March, informed the darogah of the occurrence of the dacoity.

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Burooah to go the rounds with him, and while they were thus engaged, at about one *puhur* of the night, they heard the noise of blows as it were of a *denkee* or log of wood (used for husking grain, &c.,) against the door of some house in the village of Jamrah, and likewise heard the villagers call out '*legiya, legiya*' (literally, taken away,) and shortly afterwards observed a house on fire; and they, the chowkeedar and Burooah, concluding that a dacoity had been committed, returned to the house of Jaunkee Patur to see whether the above-named strangers were still there, and finding they had taken their departure, they asked Jaunkee Patur's wife regarding them, and she said that Doorgee Dey, after partaking of some rice, left the house with his companion at three *ghurries*, or about eight o'clock of the night, and having subsequently heard that Keenoo Patur was a person of bad character, and that, on the night on which he saw him and Doorgee Dey sitting in Jaunkee Patur's house a dacoity had been committed in Kesub Patur's house at Jamrah, and that the chowkeedar had been killed with a spear at Bamundah (Shamil Raipore), by some bad characters, he had come to give information.

"On hearing the above, the darogah sent persons to fetch Kesub Patur and apprehended Doorgee Dey and Keenoo Patur, and with what an unsatisfactory result, as respects the former, has been already told.

"On the 6th April, the darogah reported that the above-named Doorgee Dey and Mudhoo Barrick, who had been apprehended on the information of Doorgee Dey, had that day (though their confessions are dated the 4th of April,) confessed, that on the afternoon of the 14th Cheyt, they left their homes to go to bathe in the sea on the occasion of the *Barnee Ashnan* festival, and in the evening arrived at the house of Pooree Purrera, Nijampore, where they remained the night; that on the following morning they proceeded as far as the village of Goonabasaon, where they visited the house of Jaunkee Patur, and whilst smoking there were joined by Keenoo Patur, the prisoner No. 9, before alluded to, who accompanied them thence to the Puddumpore Ghaut, where they met Nidhee Jenna and the other prisoners, who previous to their arrival had performed their ablutions and were eating *julpan;* that they also then bathed, and after partaking of some refreshment joined Nidhee Jenna and this party, and they all proceeded in company to the village of Hooghly, where they rested by the side of a tank adjoining a temple, and whilst there, Gopee Jenna and Keenoo Patur informed Doorgee Dey that they were going to commit the dacoity concerning which they had previously spoken to him, and promised to give him rupees five (5), and that he was to accompany them; and he, Doorgee Dey, consented to do so; but Mudhoo Barrick, on hearing this, objected, and wished to go home, though he after-

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wards consented to remain on Doorgee Dey's promising him two out of the rupees five (5), which he was to get; that they afterwards all proceeded to Koomamoolly, where they got a brand, or some lighted grass, and went thence to Jamrah, where they arrived after sunset; and Doorgee Dey and Keenoo Patur again went to the house of Jaunkee Patur, and the rest of the party sat in some grass *jungle* to the west of the said village, until they were re-joined by Doorgee Dey and Keenoo Patur, and they all, at about six *ghurries* of the night, attacked the house of Kesub Patur, the outer wall of which some of the party scaled and opened the door and let in the others, after which they battered open the door of the house in which Kesub Patur and his family were sleeping with a *denkee*, cut the chain which fastened it on the inner side, and proceeded to plunder it; but the property having been placed in the upper story, the ladder leading to which had been removed, and Kesub Patur having called out and given the alarm of their arrival to the villagers, they were compelled to take their departure with a few small articles, *viz.*, three *kangsas*, a *lotah*, and a mat; and before doing so, to revenge themselves for their disappointment, they set fire to the premises. And as they were proceeding homewards, they were overtaken by a storm, and having got wet on reaching the village of Raipore, half of the party went to the house of a washerman, by name Sunker Dhul, and asked for a light to smoke, and the others sat by the side of a pond, a few cubits' distant from his house, and after the former had sat for some time at the door of the house and smoked, and were coming away, a paik and a chowkeedar sallied out from the house and apprehended Haroo Jenna, who called out for assistance, and those who were sitting by the pond went to his rescue, and a scuffle ensued, in which Gopee Jenna seized the chowkeedar's spear out of his hand and speared him with it in the stomach; and seeing him fall senseless on the ground, they all absconded as far as Synputtah, where they were mustered by Gopee Jenna, to see if they had all made their escape, and they thence dispersed, and went to their respective homes; and it is mainly, indeed, I may almost say solely, by the evidence of the said two accomplices Doorgee Dey and Mudhoo Barrick, who were admitted as witnesses by the magistrate under Section VII., Regulation I. of 1829, and the confessions of the prisoners Nos. 8, 10, 11, 12, 13, 14 and 15, of whom No. 10 confessed both before the police and the magistrate, and the others only before the police, that the occurrence of the dacoity and the guilt of the prisoners are established.

"Witnesses Nos. 29 to 31 deposed to the mat and brass fish having been found at Raipore where the chowkeedar was killed. Nos. 32 and 33, the one being the owner of the house which

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was attacked and burned, and the other his servant, to the fact of the dacoity having been committed, and to the similarity rather than to the identity of the mat and brass fish found at Raipore, to articles of the same description which the said witness No. 32 was possessed of. Nos. 34 and 35, to having heard the noise created by the dacoits' arrival, and to having gone to Kesub Patur's house after their departure and seen it burning, and Kesub Patur suffering from the effects of the scorching he had received; and Nos. 36 to 38, to having heard from the witness No. 34 that dacoits had attacked the house; but their evidence contains nothing definite, and can have little or no weight, having only been extracted from them after the prisoners had confessed that they had committed the dacoity.

"Musst. Bulubbee, the wife of Jaunkee Patur, witness No. 42, deposed to the fact of Doorgee Dey having come to her house accompanied by another person, on the morning of the *Barnee Ashnan*, and to their having been afterwards joined by Keenoo Patur, and likewise to Doorgee Dey and Keenoo Patur having returned in the evening when they were seen by Sahibram Jenna, chowkeedar, witness No. 40. And the said chowkeedar, who, with witness No. 41, deposed to having heard the noise caused by the arrival of the dacoits, corroborated her statement.

"The rest of the evidence on the part of the prosecution is not deserving of particular notice.

"Gopee Jenna, the prisoner No. 8, made a confession before the police similar on all general points, as relates to the dacoity, to the confessions and statements of Doorgee Dey and Mudhoo Barrick, but he stated that Doorgee Dey was the person who proposed to the rest of the party, while they were resting at Hooghly, that they should commit the dacoity. And touching the murder of Bullub Jenna, chowkeedar, at Raipore, he stated that four only of the party, *viz.*, Doorgee Dey, Mudhoo Barrick, Keenoo Patur and Haroo Jenna went to the washerman's house to fetch a light for the purpose of smoking; and that on Haroo Jenna being apprehended and struggling with the paik and chowkeedar, Doorgee Dey struck the paik on his head with a stick, and Keenoo Patur seized the spear from the chowkeedar's hand and struck him with it on his stomach, and afterwards as they were all absconding, buried it in the Puttagora river. He, however, admitted that on being asked by the burkundauzes, who were bringing him to the darogah at Bamundeah after his apprehension, where he had placed the spear with which he had killed Bullub Jenna, chowkeedar, he produced it from the river where Keenoo Patur had placed it, and that he was then taken with it and the axe found in his house before the darogah. But he retracted his confession and pleaded 'not guilty' both before the magistrate and this court.

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"Keenoo Patur, prisoner No. 9, denied throughout.

"Kanoo Dass, prisoner No. 10, confessed before the police and the magistrate, both to having been concerned in the dacoity, and having been present when Bullub Jenna was killed at the washerman's house at Raipore, and spoke to the leading points of the case, as related by Doorgee Dey and Mudhoo Barrick; but his two confessions do not in all respects tally. In fact there is a material discrepancy between them, inasmuch that before the police, he stated that he accompanied Doorgee Dey and Mudhoo Barrick to the sea to bathe; and before the magistrate he said that he went alone; that eight days prior to the occurrence, Gopee Jenna asked him to join him in committing a dacoity. The prisoner pleaded 'not guilty' before this court.

"Haroo Jenna, prisoner No. 11, confessed before the police, and generally corroborated the statements of Doorgee Dey and Mudhoo Barrick, but he stated that they, as well as Keenoo Patur, all accompanied him and the rest of the party from the Puttagora embankment to the place where they bathed. He admitted that he was apprehended by the chowkeedar at the washerman's house at Raipore, and stated that on his calling to his companions for assistance, his uncle, Gopee Jenna, who came with two others, seized the chowkeedar's spear from his hand and speared him. He denied both before the magistrate and this court.

"Daum Patur, prisoner No. 12, confessed, and also deposed to the leading points attending both the dacoity and the murder; but his statement is also at variance with those of Doorgee Dey and Mudhoo Barrick and the other prisoners, as to the company in which he proceeded to the sea to bathe, having stated that he, Bhurrut Hoee and Purkhit Singh went together, and on their arrival, found the other prisoners assembled.

"Bhurrut Hoee, prisoner No. 13, made a similar confession to the prisoner No. 12.

"Lokhee Behra, prisoner No. 14, stated that he went alone to Puddumpore, and after bathing there, met Gopee Jenna and the other prisoners, who took him to commit the dacoity, and afterwards killed the chowkeedar at Raipore, as they were returning home.

"Purkhit Singh, prisoner No. 15, corroborated the confessions of the prisoners Nos. 12 and 13.

"The remaining prisoners, Nos. 16 to 21, who denied throughout, were acquitted by this court.

"The Mofussil confessions of the whole of the prisoners, as well as the foujdaree confession of Kanoo Dass, No. 10, were certified by the attesting witnesses to have been voluntarily made.

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"The prisoners, in their defence, pleaded generally, that Doorgee Dey and Mudhoo Barrick, who confessed committing the dacoity, and being present at the murder of Bullub Jenna, chowkeedar, had accused them either through enmity, or because they had been tutored by the police; that they, the prisoners, were grossly maltreated and tutored by the police to confess and accuse one another; and that they did not know what was written for them in the Mofussil. Also, that Kurreem Buksh, the darogah of the Balasore thanna, who was deputed to investigate the case in concert with the Moheshpore darogah, attended at the magistrate's court while the case was under investigation there, tutoring their witnesses, and prohibiting them from stating anything in their favor, and likewise holding out threats to them, stating that if they did, they would be subjected to the same punishment as the two prisoners who were cited by Nidhee Jenna, who were confined in jail in the *hajut tujveez* guard for four months, because they deposed that Nidhee Jenna was at his house at the time of the dacoity; and that their witnesses in consequence were afraid to say anything to exculpate them. Moreover, that the said darogah, Kureem Buksh, kept the aforenamed Doorgee Dey and Mudhoo Barrick at the thanna at Balasore, tutoring and instructing them what to say.

"The foregoing is a summary of the particulars of the case; and it remains to consider what degree of credit is to be attached to the evidence of the witnesses Doorgee Dey, No. 1, Mudhoo Barrick, No. 2, Sahibram Chowkeedar, No. 40, Sreedhur Maintee, No. 41, and Musst. Bullubbee No. 42, and the objections advanced by the prisoners. On the rest of the evidence I have already expressed my opinion in the earlier part of this report.

"With respect to the evidence of the first two witnesses, who, if there is any truth in their statements, were accomplices in the dacoity, it is not without some misgivings that I feel compelled to admit it; for experience has impressed me with the belief that it is not an uncommon practice with the police to arrest and hold out promises of impunity to some parties, whether implicated or not themselves in the crime charged, if they will accuse others of having been so; and I must confess that, under all the circumstances of the present case, I think it would have been better to have allowed the above-named persons to bear the penalty of their own confessions, than to have admitted them to inculpate others; for they appear to me to have been in every respect equally guilty as the rest. In the statements of the other witnesses above-named, there is nothing improbable; but they would have carried still greater conviction along with them, had the chowkeedar and Burooah, who

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were village police, at once communicated the occurrence of the dacoity to the darogah to whom they were subordinate, notwithstanding it did not take place within their own village.

"Regarding the objections advanced by the prisoners, full scope must be allowed for exaggerations; for there is nothing that persons of their character, when placed in the situation they are at present, will hesitate to assert. Still there are two facts alleged by them deserving of consideration, the first, that of the witnesses Doorgee Dey and Mudhoo Barrick having been eight months, or from the time of their apprehension to the time that they appeared to give their evidence at the sessions, at the thanna, or its immediate vicinity, under the eye and superintendence of the darogah; and the second, that of the two witnesses cited by the prisoner Nidhee Jenna, No. 17, having been committed to jail and kept in the *hajut tujveez* guard after they had given evidence exculpatory of the defendant. And I must admit that the detention of Doorgee Dey and Mudhoo Barrick, under the surveillance of the police at Balasore, after they had been examined as witnesses, apparently betrays a doubt as to the genuineness of their statements and confessions: at all events, it imposed restrictions on the free exercise of their judgment, whether to stand by or retract their statements according as they might be true or false, and it affords grounds, more or less strong, for the allegations of the prisoners, to the effect that the darogah tutored the witnesses. On this subject, I beg to call the court's attention to the magistrate's letter, No. 61, of the 11th December, in reply to my proceeding, requesting information why Doorgee Dey and Mudhoo Barrick were confined at the thanna instead of in jail up to the time they were examined as witnesses.

"Concerning the imprisonment of Nidhee Jenna's witnesses (the necessity for which the magistrate ought to be the best judge), it would not be unreasonable to infer that it might have created some alarm in the minds of the witnesses named by the other prisoners and prevented them from speaking out so boldly as they might otherwise have done, provided they had been confined previous to their giving their evidence; but unfortunately for the prisoners who advanced this objection, the witnesses named by Nos. 11, 12, 13 and 16 were examined some days, and those of No. 19, two days before they were ordered to be confined; and consequently their plea tells against them instead of in their favor.

"The prisoners were unable to adduce any evidence in support of their allegations that they had been maltreated by the police.

"I have considered it proper thus prominently to bring the above circumstances to the court's notice, in order that the

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prisoners may receive the benefit of any doubts they may create, whether in favor or against them. But after giving their objections as well as the discrepancies apparent in their confessions as to the parts severally taken by them, either at the time of committing the dacoity, or when the chowkeedar was killed, &c., full consideration, I do not think there exists sufficient grounds for rejecting the confessions which have been sworn to by the attesting witnesses as having been voluntarily made, and which have been corroborated by the testimony of Doorgee Dey and Mudhoo Barrick, who were admitted as king's evidence, and likewise by that of Sahibram Jenna, witness No. 40, and Musst. Bullubbee, witness No. 42, who depose to the fact of Doorgee Dey and Keenoo Patur's having been at the house of the said Musst. Bullubbee at Goonabasaon, which is contiguous to Jamrah, where Kesub Patur lives, immediately before the dacoity took place, and the general circumstances attending the two occurrences, *viz.*, the dacoity and the murder; and I would accordingly convict Gopee Jenna, No. 8, Kanoo Dass, No. 10, Haroo Jenna, No. 11, Daum Patur, No. 12, Bhurrut Hoee, No. 13, Lokhee Behra, *alias* Lokhee Barrick, No. 14, and Purkhit Singh, No. 15, on their own confessions, and the evidence of the witnesses, and Keenoo Patur on the evidence of the witnesses and the general circumstances of the case, he having been implicated on the confessions of all the prisoners as one of the principals both in the planning and commission of the dacoity. And I would sentence them, with reference to their two-fold conviction, as recommended in the murder case as follows, *viz.*, Gopee Jenna to imprisonment for life in transportation; Keenoo Patur, to twenty-one (21) years' imprisonment, and the prisoners Nos. 10 to 15 to fourteen (14) years' imprisonment, all with labor in irons in banishment."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills)—" Kesub Patur denied to the darogah that his house had been attacked, and burnt to the ground by dacoits, as he says, he could not afford to bear the expense attendant on a police inquiry into the case. Before the magistrate, when examined on oath, he revealed the real facts. Crime is commonly concealed in Bengal; natives will rather submit to their losses than subject themselves to investigations, which are seldom productive of good effect, and which always inflict on them inconvenience and expense, and I cannot therefore agree with the sessions judge in deeming the testimony of Kesub Patur and of the witnesses, his neighbours 'inconclusive and unsatisfactory,' because they merely concealed their knowledge of the dacoity. There is I think no room whatever to doubt that the dacoity occurred in the manner stated.

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"The sessions judge says, that he has some misgivings as to the admissibility of the evidence of the approvers, and thinks it would have been better under the circumstances of the case to have allowed them to bear the penalty of their own confessions. In this opinion I do not concur. The magistrate has, in my judgment, exercised a wise discretion in the course he adopted. The approvers were not principals in the robbery, and without their evidence it would have been impossible to convict the leaders of this formidable gang of dacoits.

"The murder, the subject-matter of the following case, brought the occurrence of the dacoity to light. The approver, Doorgee Dey, was apprehended on the information of Sahibram Jenna. He confessed to being present at the dacoity and murder, and implicated the other prisoners.

"The approvers have, as it seems to me, given their testimony in a frank and open manner, and their evidence has been sufficiently and satisfactorily confirmed not only as to the facts of the case generally, but as to facts which prove that they were connected with the crime charged. Their statement (which it is to be noted, was given before Kesub Patur admitted that he had been robbed) to the effect that they attacked the house, but could not get admittance into the second story where the property was kept, in consequence of the removal of the ladder, and that they set fire to the house in revenge for their disappointment, is confirmed in a remarkable degree by the testimony of the plaintiff and his servant, and generally by that of his neighbours; they speak to the house being attacked and burnt, to the property being kept in the upper story and to the removal of the ladder. Then, the approvers indicated the locality where the prisoner Gopee Jenna had buried the spear with which the chowkeedar was slain, and were searching for it, when Gopee Jenna was brought there, and produced it from the mud of the river. Further, their statement is corroborated by the confession of the prisoners Nos. 8, 10, 11, 12, 13, 14 and 15, before the police, and by that of No. 10, before the magistrate, by the evidence of Sahibram Jenna, who saw the prisoner Keenoo Ram, in company with the approver Doorgee Dey, on the morning of the day of the dacoity at the house of Musst. Bullubbee, which is in the village adjacent to Jamrah, Kesub Patur's residence; by that of Musst. Bullubbee herself, who deposed to their coming to her house both on the morning and also early on the night of the dacoity, and by the absence of the prisoners from their houses as proved by their neighbours, who deposed to their going to bathe in the sea, on the occasion of the *Baroonee* festival, thus corroborating the story of the approvers on this point.

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"The defence of the prisoners that their confessions were extorted from them is not substantiated. On the contrary, the subscribing witnesses depose to their making free and voluntary admissions of their guilt. They further allege that the approvers bore them enmity, and were tutored by the police to give evidence against them. There is no evidence whatever of the first plea, and the imputation contained in the second is refuted by the magistrate's explanation recorded on the proceedings. The magistrate states—'The police darogah did not return to Bala-'sore till many days after Doorgee Dey and Mudhoo Barrick 'made their confessions before me, till after I had many conversa-'tions with them, and till after I had thoroughly satisfied myself 'that their statements were worthy of credit.'

"As regards the detention of the approvers under the surveillance of the police, after they had been examined as witnesses, on which the judge lays much stress, I am of opinion, that approvers are not entitled to their absolute discharge, until it be known whether they have fulfilled the conditions of the pardon offered to them, and in order to secure their attendance at the trial, the magistrate is fully justified in committing them to prison, and this is a more regular, though a less considerate, course to the individual than that adopted by the magistrate in this case.

"I convict all the prisoners on the evidence and sentence, Nos. 10, 11, 12, 13, 14 and 15 to fourteen (14) years' imprisonment, each with labor and irons in banishment. The prisoners Nos. 8 and 9, who were the leaders of the gang, are sentenced in the case of murder."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

GOPEE JENNA (No. 22), KEENOO PATUR (No. 23), KANOO DASS (No. 24), HARRO JENNA (No. 25), DAUM PATUR (No. 26), BHURRUT HOEE (No. 27), LOKEE BEHRA, ALIAS LOKHEE BARRICK (No. 28) AND PURKIT SINGH, ALIAS PURKIT JENNA (No. 29).

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Conviction by the Nizamut Adawlut, of one prisoner of culpable homicide, and of one of assault with wounding on the evidence of two approvers, which was strongly corroborated by the circumstantial facts of the case, and the confessions of the prisoners themselves. The other prisoners were acquitted, as it did not appear that they took any part in the assault.

The court held that, as the blow was given suddenly in the dark, and in a scuffle, and upon provocation, the crime was reducible to culpable homicide.

Sentences of imprisonment for life, passed on the two prisoners with reference to their conviction in the foregoing case of dacoity attended with arson and to their being leaders of the gang.

CRIME CHARGED.—No. 22, 1st count, wilful murder of Bullub Jenna Chowkeedar; 2nd count, aiding and abetting and being accessary before and after the fact to the murder of Bullub Jenna aforesaid; 3rd count, aiding and abetting prisoner No. 23, in assaulting and severely wounding Buggee Dulye, paik; No. 23, 1st count, aiding and abetting and being accessary before and after the fact to the murder of Bullub Jenna aforesaid; 2nd count, having assaulted and severely wounded Buggee Dulye aforesaid; and Nos. 24 to 35, 1st count, aiding and abetting in, and being accessaries before and after the fact to the murder of Bullub Jenna aforesaid; 2nd count, aiding and abetting in the assault and severe wounding of Bhuggee Dulye aforesaid.

Committing Officer, Mr. W. J. Allen, magistrate of Balasore, Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 12th December 1851.

Remarks by the sessions judge.—" The manner in which this case of murder is stated to have taken place having been already narrated in my report on the accompanying case of dacoity, which was committed by the same parties, and the circumstances attending it, as they appear on the record, rendering the murder of Bullub Jenna, chowkeedar, rather a sequel to the dacoity than a separate and distinct occurrence, it appears to me unnecessary to recapitulate a second time the whole of the details which preceded or even followed it, and I shall therefore only notice such new evidence as the case furnishes, and allude, as briefly as possible, to those parts of the evidence in the dacoity case as

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tend more immediately to establish the present charge against the prisoners.

"It is stated that the prisoners, after committing the dacoity in the house of Kesub Patur, got wet in a storm in their way home, and on their arrival at Raipore at about 1 o'clock at night, some of their party went to the house of Sunker Dhul, washerman, and asked for a light to smoke, while the rest of them sat by the side of a pond a few spaces from the house; that after they had been asked certain questions by some person supposed to be the washerman inside the house, as to where they lived and where they came from at that hour of the night, they were told to insert their *chillum* through a hole or crevice in the *choukut*, or lintel of the door, which they did and got a light, and sat there for some time and smoked; and that as they were going away, two persons (who turned out to be Buggee Dulye, paik, and Bullub Jenna, chowkeedar,) sallied forth from the house, and seized hold of one of the dacoits, who called out for assistance, and on his companions proceeding to rescue him, a struggle ensued, in which one of the party seized Bullub Jenna's spear from his hand and speared him in the stomach and killed him; and another inflicted a blow with a stick on the head of Buggee Dulye, and by a second blow, broke his spear and knocked it out of his hand.

"Doorgee Dey and Mudhoo Barrick, (admitted by the magistrate as king's evidence) the principal witnesses in this as well as in the dacoity case, deposed to the above facts, and stated further that Gopee Jenna seized the chowkeedar's spear, and speared him with it, and afterwards buried it in the bed of the Puttagora river, and that Keenoo Patur was the person who wounded Buggee Dulye, paik, on the head.

"Buggee Dulye, paik, witness No. 3, deposed, that when he and Bullub Jenna, chowkeedar, with Sheewuck Dulye, one of the inhabitants of the village, were going their rounds it rained, and being near the house of Sunker Dhul, washerman, at the time, they took shelter in his verandah; that while they were sitting there, the prisoners arrived and asked for a light to smoke, which, after some conversation, was given to them through a hole in the door by Sheewuck Dulye; and that after they had smoked and were leaving the house, he, Buggee Dulye, opened the door and told them he could not let them go until the morning, as he had ascertained who they were; that he and the chowkeedar then apprehended one of the party who called out to Keenaram to come to his rescue, and all the others collected and released him, and struck him, the witness, a blow on the head; and as he was raising his spear to strike them, some one struck his spear with his stick and it fell broken from his grasp, and he then took refuge in the tank or pond, whence he

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called out to the villagers to come to their assistance. But the different statements of this witness, as regards the details of the case, are contradictory and far from satisfactory; for, before the darogah he stated that the person who was apprehended stated that his name was Keenaram, and that he was the person who speared Bullub Jenna, chowkeedar; and before the magistrate he said that he identified Gopee Jenna as the person who killed the chowkeedar, because he had an enlarged leg, and Keenoo Patur and Harro Jenna as the parties who beat him; and before this court he alleged that Harro Jenna was the person whom the other dacoits released. And when questioned how his back got scratched, he stated for the first time before this court that while wrestling with Doorgee Dey, he first sat on the top of him, and afterwards Doorgee Dey, witness No. 1, threw him and scratched his back.

"Sheewuck Dulye, witness No. 4, (stated his age to be 10 years, but from his appearance he may be 12 or 13) deposed to having gone the rounds with the chowkeedar and paik on the night of the occurrence for the first time, and to have been in the washerman's house with them, and to have witnessed the apprehension of the dacoit and the murder of the chowkeedar. But with reference to his youth, and the consequent improbability of his having been called on to go the rounds; and the circumstance of *his own house* being contiguous to the washerman's*, which would lead one to suppose that he would have taken shelter *there* when overtaken by a storm, instead of in the washerman's, prevent my placing much reliance on his testimony.

"Sunker Dhul, witness No. 5, supported the statements of witnesses Nos. 3 and 4; but strange to say, he stated that he did not see them and the chowkeedar during the time they were sitting in the court-yard of his house, having, as he alleges, been confined to his bed by a nail running into his foot. He, however, stated that on hearing Buggee Dulye call out when he was attacked by the dacoits, he crawled to the door of his house, and from the light afforded by flashes of lightening, saw a man with an enlarged leg (this is evidently an after-thought, fabricated on the strength of the fact of Gopee Jenna's having elephantiasis in one leg, for no one mentioned the circumstance until after he was apprehended), a boy and a young man, with his hair cropped short, pull the chowkeedar by the east side of the tank and there spear him. And before the magistrate he said that he saw the person with the thick leg spear him, and pointed out Gopee Jenna, Harro Jenna and Daum Jenna as the persons whom he saw pulling him.

* The houses of Bullub Jenna, chowkeedar, and Buggee Dulye are also within a short distance from the washerman's.

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"Witnesses Nos. 15 to 17 deposed to the wounds on the stomach and head of the chowkeedar, and to having seen the mat, brass fish, sicca rupee, two pice, a small bag, a broken stick and broken spear lying scattered about near to the spot where the chowkeedar was killed.

"Witnesses Nos. 35 to 40 and 42, deposed to Gopee Jenna, the prisoner No. 22, having pointed out and produced from the mud in the bed of the Puttagora river, the spear with which Bullub Jenna was killed, and Nos. 44 and 45, to having seen the prisoner Keenoo Patur and Doorgee Dey, witness No. 1, in company with one another on the night of the murder. The rest of the witnesses deposed as per the headings in the calendar.

"Before this court all the prisoners pleaded 'not guilty,' but Nos. 22 and 24 to 29 confessed before the police, and No. 24 repeated his confession before the magistrate. No. 22 denied throughout, and it is on the grounds of their confessions (as in the dacoity case) which have been sworn to as having been voluntarily made, and the evidence of their accomplices, Doorgee Dey and Mudhoo Barrick, that their conviction principally depends, for, as I have already shown, the statements of Buggee Dulye are as regards details contradictory; and it is not credible that he and Sunker Dhul could identify people whom they had never seen except at midnight by the light of a flash of lightning.

"Gopee Jenna, prisoner No. 22, stated that on their reaching the washerman's house at Raipore, Doorgee Dey, Keenoo Patur, Harro Jenna and Mudhoo Barrick went to get a light to smoke, and that he and the others sat about a beegah distant from the house; that about one *dund* afterwards Harro Jenna cried out that he had been apprehended, and called to the rest to go to his rescue; and while he was struggling with the chowkeedar and paik by the side of the tank, Keenoo Patur seized the spear from the chowkeedar's hand and speared him with it, and they all ran towards the Puttagora river, in which Keenoo Patur buried the spear and went home. And after he, Gopee Jenna, was apprehended and was being taken to the darogah, he produced the spear from the river where Keenoo Patur had placed it.

"Kanoo Dass, prisoner No. 24, stated before the police, that he, Daum Patur and Daum Jenna sat by the pond near the washerman's house while the others went for a light to smoke, and on Harro Jenna's being apprehended, as they were leaving the house, Daum Patur, Suttroo Jenna, Lukhun Jenna, Gopee Jenna and Bhobun Jenna went to his rescue, but the paik and chowkeedar would not release their hold of him, and Gopee Jenna took the spear from the chowkeedar's hand and speared him with it in the stomach, and they all absconded.

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"Before the magistrate he stated that he and Mudhoo Barrick sat together at the distance of ten *goonths* from the washerman's house, and all the others went to get a light to smoke, and that as they were coming away after smoking, Harro Jenna, who was behind, was arrested by the paik and chowkeedar, and the others went to his assistance, and Gopee Jenna seized the chowkeedar's spear from his hand and killed him. He further stated that after they had proceeded a short distance, Gopee Jenna said that he had speared the chowkeedar, and Doorgee Dey said that he struck the paik on the head.

"Harro Jenna, prisoner No. 25, stated that they (the dacoits) went to the washerman's house and Daum Patur asked for a light, which they got and smoked, and as they were coming away, three men came out of the house and laid hold of him by the waist, and he called to the others for assistance, when Keenoo Patur, Gopee Jenna and Lukhun Jenna came and tried to rescue him, but the chowkeedar would not let go his hold, and his uncle Gopee Jenna seized the spear from his hand and speared him with it, and they all absconded across the Puttagora river, where Gopee Jenna buried the spear.

"Daum Patur, prisoner No. 26, stated that Gopee Jenna, Harro Jenna, Lukhun Jenna and Keenoo Patur went to the washerman's house for a light, and the rest sat by the pond; and as Keenoo Patur was coming away with the light, Harro Jenna called out that he had been apprehended, and Keenoo Patur, Lukhun Jenna and Gopee Jenna went and brought him away; and Gopee Jenna said that he had killed the chowkeedar and thrown the spear into the Puttagora river.

"Bhurrut Hoee, prisoner No. 27, stated that he and Daum Patur sat by the pond, while the others went to fetch a light, and one *dund* afterwards Harro Jenna called out that he had been apprehended, and after they had absconded across the Puttagora river, Gopee Jenna said that some one apprehended Harro, and he killed him with his spear, which he had thrown into the river.

"Lokhee Behra, *alias* Lokhee Barrick, prisoner No. 28, stated that Gopee Jenna, Harro Jenna, Keenoo Patur and Lukhun Jenna went to get a light, and one *dund* afterwards Harro called out that he was apprehended, when those sitting by him (the prisoner) went to his assistance, and Gopee Jenna speared the chowkeedar, and they all absconded across the Puttagora river, when Gopee Jenna said he had killed the chowkeedar and thrown the spear into the river.

"Purkit Singh, *alias* Purkit Jenna, prisoner No. 29, stated that on reaching the washerman's house, Gopee Jenna, Keenoo Patur, Harro Jenna and two or three others went to get a light,

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when somehow or other Harro Jenna was apprehended, but was released by Gopee Jenna and others, and they all absconded across the Puttagora river, when Gopee Jenna said he had killed the chowkeedar with his spear, which he had placed in the river.

"The prisoners stated that they had no further defence to make than that already recorded in the dacoity case.

"The *futwa* of the law officer convicts the prisoners No. 22 to 29 of being accomplices in, and accessary after the fact of the murder of Bullub Jenna, chowkeedar, and of aiding and abetting in the assault on Buggee Dulye, on the grounds of the evidence of the witnesses Nos. 1, 2, 3, 4, 5 to 44 and 45, the confessions of the prisoners Nos. 22 and 24 to 29, the production of the spear with which the chowkeedar was killed by Gopee Jenna, prisoner No. 22, and the general circumstances of the case. And on the same grounds, I concur in their conviction; for although there are discrepancies in the statements of the different prisoners, as to the parts severally taken by them, both at the time of the dacoity and the murder, I do not consider them of sufficient importance to vitiate the confessions, corroborated as they are by the production of the chowkeedar's spear by Gopee Jenna from the Puttagora river; and with reference to the twofold conviction of the prisoners, and the prominent parts which Gopee Jenna and Keenoo Patur, who, from the magistrate's rubookaree of 30th July 1851, seem to be notorious dacoits, apparently took in the two cases, *viz:* Gopee Jenna having speared and killed the chowkeedar, and Keenoo Patur having set fire to Kesub Patur's house, I would recommend that Gopee Jenna be sentenced to imprisonment for life beyond sea, Keenoo Patur to twenty-one (21) years', and the prisoners Nos. 24 to 29 to fourteen (14) years' imprisonment, with labor in irons in banishment."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"It appears in evidence, that the prisoners, after committing a dacoity attended with arson, in the house of Kesub Patur, as detailed in the preceding case, were, on their return to their homes, overtaken by a storm of rain, that they stopped at the village of Raipore to smoke and dry their wet clothes; that some of the party went to a washerman's house to get a light; that the washerman, after some inquiries as to their business there at night and places of residence, gave them a light through a crevice of the door; and as they were moving off, the deceased, who was the chowkeedar, and witness No. 3, who was a paik of the village, rushed out of the washerman's house and seized the hindermost of the party, when in the scuffle which ensued, the deceased met his death, and the witness No. 3 was wounded on the head.

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"The approvers depose consistently throughout the proceedings to the prisoner Gopee Jenna snatching the spear out of the hands of the deceased and wounding him with it—and to the prisoner Keenaram inflicting a blow with a stick on the head of Buggee Dulye.

"The evidence of the eye-witnesses, Nos. 4 and 5, as to the identity of the prisoners above-mentioned, is contradictory and incredible, but the statement of the approvers is fully supported by the confessions of the prisoners, and by the fact of Gopee Jenna producing the spear, with which he struck the deceased, from the place where he had concealed it, while it also consists with the probabilities of the case. It does not appear that the other prisoners took any part in the assault, and they are accordingly acquitted.

"The witness No. 3 states that he and the chowkeedar attempted to arrest the prisoners for the purpose of ascertaining their names and places of residence. They had no knowledge nor had they any reason to believe that the prisoners had committed a felony. As the blow was given suddenly in the dark and in a scuffle and under circumstances of irritation consequent on the unauthorised arrest of one of the party, I think the crime is fairly reducible to culpable homicide, though of course it is aggravated by the use of a deadly weapon.

"I convict the prisoner Gopee Jenna of aggravated culpable homicide, and the prisoner Keenaram, of assaulting and wounding Buggee Dulye; and taking into consideration their conviction of dacoity with arson in the foregoing case, in which they were shown to be the leaders of the gang, I sentence them to be imprisoned for life in transportation."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

HURKISHORE DASS

versus

SHEIKH DEDAR BUKSH (No. 3), SHEIKH NUBOO (No. 4 APPELLANT), ARRADHUN SINGH (No. 5) AND SHEIKH NATHOO (No. 6 APPELLANT).

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Case of SHEIKH DEDAR BUKSH and others.

The sentences passed upon all the prisoners (appellants and non-appellants,) affirmed by the Nizamut Adawlut.

CRIME CHARGED.—Nos. 3 and 4, 1st count, burglary in the dwelling-house of the prosecutor, and stealing therefrom cash and property valued at Company's rupees 791-12-0; 2nd count, knowingly and wilfully receiving and keeping in their possession the above stolen property knowing the same to have been stolen; Nos. 5 and 6, 1st count, accessaries both before and after the fact; 2nd count, knowingly and wilfully receiving and keeping in their possession the above stolen property knowing the same to have been stolen.

CRIME ESTABLISHED.—Nos. 3 and 4, burglary and theft and knowingly receiving stolen property; Nos. 5 and 6, accessaries both before and after the fact, and knowingly receiving stolen property.

Committing Officer, Mr. R. Abercrombie, magistrate of Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 20th December 1851.

Remarks by the sessions judge.—"The prisoners Nos. 3 and 4 are charged on the 1st count with burglary and theft of property, valued at Company's rupees 791-12-0, and in a 2nd count, with receiving and having in their possession stolen property, knowing the same to have been stolen.

"The prisoners Nos. 5 and 6 are charged with accessaryship both before and after the fact, and with the above 2nd count.

"It appears that the prosecutor's house was broken into on the night of the 24th September last, and property to the amount above stated carried off. Information was immediately given to the police and inquiry made, and in consequence of the prisoner No. 5, (a dependent of the prosecutor's) having absented himself at the inquiry, suspicion fell upon him. He was arrested, and his statement led to the apprehension of the rest of the prisoners, and the recovery of a large portion of the property, amounting to rupees 499-11-1.

"The prisoner No. 3 confesses before the police and the magistrate and also in this court. No. 4, before the police and the magistrate, No. 5 before the police only, No. 6 denies throughout. The occurrence has been fully proved. The confessions of the confessing prisoners duly attested and evidence

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recorded as to the recovery of the property from the prisoners, and to its being that of the prosecutor. The Mofussil and foujdaree defence of the prisoner No. 6 is very weak. He states that the property recovered from him was found by him near the prosecutor's house. The pleas of the prisoners Nos. 4, 5 and 6, before this court, in no way exculpate them. The prisoner No. 3 is shown to have been previously convicted and sentenced for burglary, and the prisoner Arradhun, who is the slave of the prosecutor, appears to have planned the robbery. In concurrence therefore with the *futwa* of the town cazee, which convicts the prisoners of the crimes charged, they have been sentenced as described in column 12 of the statement."

Sentence passed by the lower court.—No. 3, imprisonment for ten (10) years. Nos. 4 and 6, five (5) years each. No. 5 for seven (7) years, each with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.—"The prisoners Nos. 4 and 6 have appealed. The prisoner No. 4 confessed before the police, but *not before the magistrate*, as erroneously stated in the sessions judge's remarks, and produced rupees 7, which he admitted he received from the other prisoners in part share of the booty. There is no proof whatever of his plea that the confession was forced from him by fear, while the evidence to its having been freely and voluntarily made, and to the finding of the money, is clear and convincing. Judging of his confession by all the circumstances of the case, I am of opinion it is entitled to credit. The prisoner No. 6 pleads ill-treatment, and the surreptitious introduction of the stolen plate into the house by the police; but it is satisfactorily proved that he himself gave up the said article, alleging that he found it on the road. This plea he also urged before the magistrate; but it is unsupported, and therefore strengthens the presumption that he got the plate feloniously. I convict the prisoner No. 4 of burglary, the lesser crime of knowingly receiving stolen property being merged in the greater, and the prisoner No. 6, of knowingly receiving stolen property, and confirm the sentences passed on them by the sessions judge. The conviction of the prisoners who have not appealed is fully supported by the evidence."

PRESENT:

A. J. M. MILLS, Esq. *Officiating Judge.*

GOVERNMENT

versus

OODEE LAL (No. 9) AND MELUN (No. 10).

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Case of OODEE LAL and another.

The appeal of the prisoners, convicted and sentenced for perjury in the sessions court, rejected by the Nizamut Adawlut.

CRIME CHARGED.—No. 9, perjury, in having, on the 16th December 1851, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the joint magistrate of Barh, zillah Patna, that he never witnessed the taking of the deposition of one "Jeree Lal," and that he knew not how to write, and in having, on the 22nd December 1851, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said joint magistrate of Barh, that he did witness, and signed with his own hand, the deposition of the said "Jeree Lall." Prisoner No. 10, perjury, in having, on the 16th December 1851, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the joint magistrate of Barh, that he did not witness the deposition of "Jeree Lal," nor was he in the presence of the jemadar at the time, and in having, on the 22nd December 1851, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said joint magistrate of Barh, that he signed the deposition of "Jeree Lal," and that it was taken before him, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. C. F. Carnac, joint magistrate of Barh, Patna.

Tried before Mr. G. Gough, commissioner of Patna with powers of a sessions judge, on the 12th January 1852.

Remarks by the commissioner.—"The prisoners in this case were witnesses to a deposition made by one Jeree Lal at Chowkee Chumpapore, in the jurisdiction of the sub-division of Barh, regarding a charge, preferred by the above-named individual, of dacoity, which subsequently turned out to be a false complaint. Jeree Lal denied having made the deposition above referred to, and when the prisoners were sent for to prove it, they also denied having witnessed it, in apparent collusion with Jeree Lal, with the view of his avoiding punishment for the false complaint made by him. On re-examination, however, before the joint magistrate of Barh, they acknowledged having witnessed Jeree Lal's deposition, thereby convicting themselves of perjury on a point material to the issue of the case. The evidence adduced proves that the prisoners did witness Jeree Lal's deposition at Chow-

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kee Chumpapore, and, also, that they gave evidence before the joint magistrate, *first*, on the 16th December 1851, and again on the 22nd of the same month, when their depositions were wholly opposed to each other—in the first instance, denying that they were witnesses to Jeree Lal's deposition, and *secondly*, acknowledging that they had witnessed it. The assessors who sat with me convicted the prisoners of the charge preferred, and, in accordance with their finding, I have sentenced the two prisoners Oodee Lal and Mclun each to three (3) years' imprisonment with labor and irons."

Remarks by the Nizamut Adawlut—(Present: Mr A. J. M. Mills.)—"The prisoners have appealed, but have urged no substantial objection to the conviction. Indeed they both admitted their guilt at the trial, stating that at the time they deposed falsely, they were not masters of their senses. I see no reason to interfere with the sentence in this case, and reject the appeal."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

MUSST. GULEEAH

versus

SYED BABAR ALEE (No. 1) AND MUSST. NAJOO, ALIAS NUJEEAH (No. 2).

1852. April 14. Case of Syed Babar Alee and another.

The prisoners, one convicted of rape, and the other of privity to it, were sentenced as proposed by the sessions judge.

CRIME CHARGED.—Prisoner No. 1, rape on the person of Musst. Luteefun, daughter of the prosecutrix, aged about ten years; prisoner No. 2, privity to the above before and after the fact.

Committing Officer, Mr. A. E. Russell, officiating magistrate of Purneah.

Tried before Mr. F. Lowth, officiating sessions judge of Purneah, on the 25th February 1852.

Remarks by the officiating sessions judge.—"The prisoners pleaded 'not guilty' to the charges preferred against them,

"The following are briefly the circumstances of the case:—The prosecutrix with her daughter Luteefun, about ten years old, and son Ughoree, about twelve years of age, had been residing with the prisoner Najoo, for some ten days in the month of Aghun, but in consequence of a dispute, had, on the morning of the occurrence, left to look out for lodgings elsewhere, leaving both her children behind, with strict injunctions to her son not to quit the house till her return. The prisoner, Syed Babar Alee, was in the house at the time and had been a lodger there for some time previous. On her return home the prosecutrix called to her daughter to bring her the *hookah*, when the prisoner Najoo

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interposed, saying the girl had been twice sick after eating and was lying down. The prosecutrix expressed her surprise at so unusual an occurrence, and then busied herself with the removal of her goods and chattels. After a little while her son Ughoree came home, having been some time before sent away by the prisoner No. 1 to buy some *mudduk*, and shortly afterwards called to his mother to come and see what was the matter with his sister, as her clothes were all bloody. The prosecutrix ran out into the court-yard, and there found her daughter trembling very much, her clothes bloody, and blood on the ground where she stood. She then seated her daughter on the ground and asked what had happened, when the whole story was related to the effect, that whilst she was cooking, the prisoner No. 1 came and seized her, and stopping her mouth with a cloth, threw her on a bed in an adjoining room and ravished her, whilst the other prisoner kept watch at the outer door to prevent interruption; that the prisoner No. 2 then came and washed her and tried to stop the hæmorrhage, and gave her some stale milk to drink, which, coupled with the bad treatment she had just been subjected to, caused her to be sick. The prosecutrix towards evening, finding her daughter in a very weakly condition, gave notice to the thanna, where shortly after the prisoner No. 1 surrendered himself, and admitted the offence to the darogah. The prosecutrix further deposed to the prisoner No. 1 having frequently, previous to the day in question, proposed to take her daughter in marriage by *nikah*, but that she had as often refused compliance with his wishes, stipulating that if he wished to make her daughter his wife he must marry her in the proper and regular manner, but to which the prisoner would not agree; that it was on this account, she (prosecutrix) and the prisoner Nujoo had quarrelled on the morning of the day in question, and that on examination of the girl's person she found the vagina had been lacerated and a great quantity of blood flowing therefrom.

"The girl Luteefun, about ten years of age, witness No. 1, on declaring herself fully acquainted with the nature of an oath, was duly sworn and deposed to the effect above stated, and further that she had been acquainted with the prisoner No. 1, since the month of *buckreed*, October; that marriage had been talked of, but the prisoner had never before even alluded to the commission of such an act as that now complained of; that on his first taking her into the room he induced her to accompany him to hear something he had to tell her, when he suddenly threw her on the bed and effected his purpose; that she called out at first but was compelled to be silent by a cloth being put over her mouth; and after the deed had been committed the prisoner No. 2, who had been keeping watch at the door, came

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and dressed her in fresh clothes and laid her on the bed to sleep whilst the prisoner No. 1 took away and concealed in the cook-room her other clothes.

"The prosecutrix's son Ughoree, about twelve years of age, witness No. 10, deposed to his having been desired by his mother to remain at the house till her return, but that prisoner No. 1 had forced him to go away to buy some *mudduk;* on his return he found his mother taking out her property from the house to give to Musst. Bunnoo, for conveyance to other lodgings, and on his sister coming out into the court-yard he remarked the bloody condition of her clothes and issue of blood on the ground and called to his mother.

"Musst. Bunnoo, witness No. 9, deposed to her having been engaged to carry the prosecutrix's property to other lodgings, and seeing the condition of the girl's dress as above noted, and further that during the prosecutrix's absence in search of lodgings, she saw the prisoner No. 2 take the girl out with a *lotah* and shortly afterwards return and put her on a bed.

"Khodabux, Khoopur, Hulalkhoree and Moolye, witnesses Nos. 2, 3, 5 and 11, deposed to their having accompanied the mohurir of the thanna to the prosecutrix's house, and seeing the girl with her clothes bloody, and hearing the account of the matter from the mother and daughter; they also deposed to the girl's person having been examined in their presence.

"Moolye further stated that the prisoner No. 2 had been a prostitute in her youth, but had latterly taken to keeping and prostituting young girls, and that he had heard from the prosecutrix of her endeavouring to act thus with her daughter and the prisoner No. 1.

"The *sooruthal*, dated 10th December 1851, to the effect that a wound of half a finger long in the vagina had been found on examination, and blood flowing therefrom, and the part swollen, was read over and duly attested by the subscribing witnesses, Nos. 2, 3 and 5, above-named.

"Dr. Beale, the civil assistant surgeon, summoned by this court, deposed to his having examined the girl, but that he could observe no signs of violence to lead him to suppose a rape had been committed; that there was neither laceration nor inflammation about the orifice of the vagina, the lining membrane appearing paler than natural, which might have been caused by the loss of blood stated to have occurred; further, from observing no laceration, he presumed the hymen to have been uninjured, but had not examined strictly to ascertain that point.

"Before the police darogah at 8 P. M., of the 10th December, the prisoner No. 1 admitted his having had connexion with the child, but pleaded that it was with her consent; that he had been residing with the prosecutrix and family for some time in Musst.

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Najoo's house, and since the month of Kartick had been providing for the whole family; that he had wished to marry the girl by *nikah*, but the prosecutrix refused and stipulated for a regular marriage, which he did not approve of. Thinking, therefore, all the expenses incurred by him would be lost in the event of the girl being married elsewhere, and the prosecutrix had for a few days previous talked of removing to other lodgings, he took advantage of her absence on the day in question, denying having used a cloth to prevent the child's calling out, and citing the other prisoner Najoo as a witness to the girl being a consenting party.

"Before the magistrate, on the following day, the prisoner repeated his confession in nearly the same terms, adding that when the prosecutrix had questioned him on the subject he had not only admitted his guilt, but had offered to marry the girl and provide for all the family for life, to which the mother agreed; but that during his absence in search of medicine to stop the hæmorrhage, she had been induced by other parties to give information at the thanna; he was, however, willing to make the girl his wife.

"Both these confessions were read over and duly attested by the subscribing witnesses.

"In this court the prisoner pleaded in his defence much to the same purport as before the magistrate, excepting that he had had any connexion with the girl. This he most stoutly denied, urging that though he had entertained the idea after talking with her about marriage, and her agreeing, and though he had induced her to accompany him into the sleeping apartment and to lie down in a state of nudity, yet his conscience smote him, and considering the very tender age of the girl, he had refrained. He also entered into a very minute and disgusting detail to account for the issue of blood from the vagina and the bloody appearance of the child's clothes, which was *altogether incredible* and unnecessary for me to set forth at length. He also urged that he had gone to procure medicines at the prosecutrix's request and was returning; but when near the thanna he was informed of the charge having been preferred against him; he therefore also repaired to the police office and recorded his statement before the darogah denying the rape, but expressing his inability to account for the appearance of blood. The prisoner cited several witnesses to speak relative to his proposed marriage with the girl by *nikah*, and to prove that he had provided for the prosecutrix and family for three months previous to this occurrence, but the testimony of these parties was altogether valueless to the accused, inasmuch as it failed both to support his pleas as well as exculpate him.

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April 14.

Case of SYED BABAR ALEE and another.

"The prisoner Najoo pleaded an *alibi*, and cited witnesses to prove it, but they likewise denied all knowledge of the matter.

"The *futwa* of the law officer convicts the prisoner Syed Babar Alee of rape, on his own confession and the evidence of the witnesses, and the prisoner Musst. Najoo, *alias* Nujeeah of privity both before and after the fact on violent presumption, and declares them liable to *tazeer*.

"In this finding I most fully agree; though there were no eye-witnesses to the fact, yet I consider the direct evidence of the girl herself, the testimony of her brother and Musst. Bunnoo, who saw her condition shortly after the occurrence, and the other witnesses, who examined her person at the time of the police mohurir visiting the prosecutrix's house, coupled with the confessions recorded by the prisoner No. 1 before the police and magistrate, and even his defence before this court, are quite conclusive against both prisoners. It matters not whether the girl did consent or not. She was an infant, and any resistance on her part against a strong young man like the prisoner would have been futile. Therefore her consent, even if given, cannot be considered of any value. It is clear the prosecutrix's son was sent out of the way purposely to enable the prisoner No. 1 to commit the deed without interruption, whilst the prisoner No. 2 acted the revolting part of keeping watch. I therefore convict Syed Babar Alee of rape and recommend his being sentenced to seven (7) years' imprisonment with labor and irons, and Musst. Najoo, *alias* Nujeeah, of privity both before and after the fact, and would sentence her to three (3) years' imprisonment with labor suited to her sex."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I concur in the conviction of both prisoners. The prisoner Babar Alee's offence clearly amounts to rape according to the Mahomedan law. Indeed, penetration, short of rupturing the hymen, which in this case is doubtful, is sufficient in English law to constitute the crime of rape. The prisoner's statement, that the girl gave her consent, rests upon his unsupported assertion; and the *futwa* declares the offence to be rape, with or without the consent of the child, as she is under age. I sentence the prisoner Babar Alee to seven (7) years' imprisonment, with labor and in irons, and Musst. Najoo to three (3) years' imprisonment, with labor suited to her sex, if not redeemed by the payment of a fine of rupees fifty (50)."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

SOROOP MUNDUL.

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Case of SOROOP MUNDUL.

A confession to privity to a burglary with murder without any corroborating circumstances rejected, and prisoner acquitted.

CRIME CHARGED.—Wilful murder of Joomrah Bewah on the night of the 23rd September 1851; 2nd count, burglary in the house of Joomrah Bewah, attended with the wilful murder of the said Joomrah Bewah; and 3rd count, privity to the fact before and after the occurrence.

Committing Officer, Mr. J. R. Muspratt, officiating joint magistrate of Baraset, 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 13th March 1852.

Remarks by the additional sessions judge.—"Joomrah Bewah was an old woman, living at Dolpota, in a house by herself only, about one *beegah* from a *pharee*, where a burkundauz was stationed. On the morning of the 24th of September, her neighbour, Arra Dhonee, appears to have given notice that she had been murdered, and it was found that she was lying on her bed with all her ornaments on her, and her large box locked, and that a hole had been cut at the bottom of the *tattee* of her house through which a man could have passed. The circumstance was at once reported at the thanna and the mohurir proceeded to the spot, and on the 25th of September, he wrote the *sooruthal*, by which it appeared that the woman had been killed by a blow on the eye. She was found lying on her bed with her face down. No person was then suspected, and no robbery was intimated. On the 28th of September, the magistrate directed the darogah to go to the spot and to investigate the case, and according to the record he arrived at the spot on the 2nd of October, and obtained some information from witnesses Nos. 12 and 13, owing to which the prisoners Nos. 1 and 2, (the latter acquitted on trial,) were apprehended on the 3rd of October. On the 4th of October these men made depositions before the darogah; that of Bykunt, No. 2, is not a confession, but Soroop stated, that he witnessed the digging of the *sind* by others, and that a box was stolen of which he did not know the contents, and the next day he said the same before the magistrate. After the confession was made, the neighbour, Arra Dhonee, is said to have stated that the deceased had a small box, but there was no witness on the trial who could say so. I cannot place any confidence in the confession of Soroop, because it is an improbable statement, and because no part of it is

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Case of SOROOP MONDUL.

supported by any facts which were afterwards proved. When a second investigation is ordered by a magistrate, and a confession is obtained at least one day after apprehension, and there is no circumstantial evidence of any kind to support it, and its tendency is to accuse others of a heinous crime, and is only a confession of the deponent's privity, it should always be looked on with suspicion. It is improbable that three men besides the prisoner should have carried off a small box, and not have taken the jewels which were on the person of the deceased woman, or have broken open her strong chest in which valuables are more likely to have been kept. The box is said to have been thrown away, yet it has not been found. There is no proof that any property was stolen, and no trace of any has been obtained. There is no evidence besides that of the men who gave the first information against the prisoners to the darogah, that the men, who are said to have committed the crime, were in the neighbourhood of Dolpota; and they live, one of them three *coss* off, and the other five or six *coss* off. The law officer finds Soroop 'guilty' of privity to the burglary with murder; but I cannot trust the confession and would acquit the prisoner."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"I concur in the view which the additional sessions judge has taken of this case. The presumption is strong that the deceased was not killed by persons in prosecution of a robbery. The cutting of a *sind* was doubtless intended to put the police on a wrong scent. The prisoner is acquitted."

PRESENT:

W. B. JACKSON, Esq., *Judge*.

GOVERNMENT

versus

BHYRUB MUNDUL (No. 12, APPELLANT), JUGGESHUR SAMUNTO (No. 14), MODHOOSOODUN SAMUNTO 1st (No. 15), GOPAL GHOSE (No. 16), HARRADHUN GHOSE (No. 18), MODHOOSOODUN SAMUNTO 2nd (No. 20), BHOOBUN BAGDEE (No. 23), GROOCHURN CHOWKEEDAR (No. 24), FOYEJ SAHA (No. 26, APPELLANT), BHOOBUN CHOWKEEDAR (No. 27, APPELLANT), SHEIKH MONIR (No. 28, APPELLANT) AND ROHIM BUX (No. 29, APPELLANT).

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Case of BHYRUB MUNDUL and others.

The sentence passed by the additional sessions judge, on conviction of affray attended with culpable homicide, affirmed.

CRIME CHARGED.—Affray attended with culpable homicide of Tumezuddin; Nos. 23 and 24 being chowkeedars at the time they committed it.

CRIME ESTABLISHED.—Affray attended with culpable homicide of Tumezuddin; Nos. 23 and 24 being police chowkeedars at the time they committed it.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. E. Bentall, additional sessions judge of East Burdwan, on the 12th February 1852.

Remarks by the additional sessions judge.—" The cowherds of the village of Durgapore were grazing their cattle within the boundary of the village of Sundepore, at about an equal distance from the two villages. The cowherds of the latter village had a dispute with them. It is also said that the dispute arose owing to the Durgapore cattle injuring the Sundepore rice-field. A party of men then went from Sundepore, and some men who were working in the fields of Durgapore met them, and an affray took place, in which Tumezuddin, who belonged to Durgapore, received a blow on his head which broke his skull and caused him shortly afterwards to die. There are five witnesses who were examined on the trial who saw the affray: the first three of them are the cowherds of Durgapore, whose negligence or intentional trespass was the cause of the affray. These men of course would not have had a regular pardon from the magistrate in a case of affray with homicide; and although their evidence may be received, it must be with very great caution. I place no confidence in their statements except as it is supported by other evidence, because there is reason to believe that they have not given the true version of the origin of the dispute as

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other persons have given it; and the statements which they made before the deputy magistrate and before me, respecting the persons who were engaged in the affray, are different; thus, before the deputy magistrate, witness No. 1, according to his written deposition, took the name of every prisoner, but before me he knows the names of only two of the first fourteen prisoners. The affray took place on the 27th of September, and information of it was carried the same day to the *pharee* of Boodbood, which is distant one-half *coss*, and where the deputy magistrate is stationed. The darogah of thanna Pootna, the deputy magistrate, and the jemadar of Boodbood visited the place on the 28th of September, and some of the prisoners are said to have been apprehended on that day and some on the 29th September; but it is not clear whether it was owing to the evidence of the uncle of the deceased man or of the cowherds; and suspicion arises respecting the date of the apprehensions, as three of the prisoners were witnesses to the wounds of other prisoners on the 27th September, which was one or two days before the wounded prisoners are said to have been apprehended. The case was hastily got up, for the deputy magistrate took the evidence of thirteen witnesses on oath and the defence of nineteen prisoners in one day, but when there are so many prisoners, it is almost impossible to get through so many witnesses and write their evidence with care. It is for this reason that I have not committed any witness for perjury, in that they deposed before the deputy magistrate that prisoners were present in the affray, and before me they did not know the prisoners. I think that the second deposition is more likely to be the correct one.

"*Prisoner No.* 12, *Bhyrub Mundul,* is recognized by witnesses Nos. 1, 3 and 4. He was accused on oath by Dowlut Sheikh on the 28th of September before the mohurir; and in a petition on the 27th of September, he is accused of having been one of the affrayers by the Mussulmans of Durgapore, who were cutting grass in the neighbourhood, and who are prisoners in the case, *viz.*, Nos. 26, 27, 28 and 29. He says that he heard of the disturbance and went to the place with the chowkeedars, and in this they support him, as do several witnesses. On the 27th of September, he was made a witness to the *sooruthal* of the wounds of other prisoners. I believe the evidence of the witnesses for the prosecution and find him 'guilty.'

"*Juggeshur Samunto, No.* 14, was recognized by all the witnesses from Nos. 1 to 5. He was mentioned in the gomashta's report as having struck Tumezuddin, and he had a mark of a wound on him, which he allowed he received at the place of affray. The same remark may be made respecting *Modhoosoodun Samunto,* son of Thakoor Dass No. 15, except that he was not mentioned in the report of the gomashta.

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"*Gopal Ghose, No.* 16, was accused on the 27th of September and apprehended on the 28th. The witnesses Nos. 2, 3 and 4 say that he was present in the affray. He says that he stood apart from the affrayers with the prisoners Nos. 26, 27, 28 and 29, who were of the opposite side; but these men in their defence say that he gave orders abetting the affrayers. His witnesses state that he did not join in the affray; but I find him 'guilty,' on the evidence of the witnesses for the prosecution, of the crime with which he is charged.

"*Harradhun Ghose, No.* 18, was recognized by the witnesses Nos. 2, 3 and 5, and received a blow in the affray, as he himself allowed on the trial.

"*Mudhoosoodun Samunto,* (son of Persaud Samunto) No. 20, of Chucktatool, (but at the time of the affray of Sundepore), was recognized at the affray only by two witnesses, Nos. 2 and 3, but there are circumstances which cause me to believe what they say they both know him by name and sight. His name is mentioned in the written report of the gomashta, dated 27th September, as having struck the deceased; and the prisoners Nos. 26 and 27, in their defence, accuse him of having struck Tumezuddin. He has called witnesses to state that he was in another village; but they had not been examined before the trial, and their evidence cannot be trusted.

"The prisoners, *No.* 23, *Bhoobun Bagdee, and No.* 24, *Groochurn Chowkeedar,* are both recognized by the witness No. 4. No. 3 also says that he recognized them, but he cannot tell their names. Witness No. 2 also says that prisoner No. 23 was present, but he cannot tell his name. But the evidence of the witnesses against the prisoners is strengthened by their defence. They did go out to, or towards the place; and Bhyrub Mundul says he called them to go, and they were likely to have gone to protect the crops of the village. I therefore find them 'guilty' on the evidence of the witnesses for the prosecution.

"*Foyej Saha, No.* 26, *Bhoobun Chowkeedar, No.* 27, *Sheikh Monir, No.* 28, and *Rohim Bux, No.* 29, were accused by Dowlut, on the 20th September, on which day they were apprehended. That they were not accused before, may have been owing to their having been of the party of the man who was killed. They were cutting grass not far from the cowherds who caused the affray. They allow that they were told of the affray and were asked to assist in it, and that they went to the place. All the five witnesses before me said that they were present, but prisoner No. 5 did not take any of their names before the deputy magistrate, and No. 4 took the names of only Bhoobun and Rohim; still as they were called to take a part in the affray, and immediately went to the spot, and as at least three of the opposite party received injuries, and it is not to be supposed that

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Tumezuddin alone opposed the other party and wounded so many persons, I cannot but believe that they were engaged in the affray.

"On passing sentence, I took the following subjects into consideration. It is not shown that any preparation for the affray was made by either side, or that the parties had any previous dispute. Some of the witnesses were probably the more deserving of punishment than the prisoners, and affrays of this kind are very uncommon in this district. If the affray arose owing to the improper conduct of the cowherds of one village, the men from the other village attacked them, and killed one of their opponents."

Sentence passed by the lower court.—Each, three (3) years' imprisonment, without irons, and a fine of rupees fifty (50), or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed by the sessions judge on the prisoners *Bhyrub Mundul, Foyej Saha, Bhoobun Chowkeedar, Sheikh Monir and Rohim Bux.*

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT

versus

JAMOO SHEIKH (No. 3, Appellant), ATIM SHEIKH (No. 4, Appellant), BAKUR SHEIKH (No. 5), HUSHNOO SHEIKH (No. 6, Appellant), SHEIKH JAKEER (No. 7, Appellant), ANOODEE SHEIKH (No. 8, Appellant) and HAROON MULLICK (No. 9, Appellant).

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Conviction and sentence passed upon the prisoners, confirmed by the Nizamut Adawlut.

Crime Charged.—Nos. 3 to 9; 1st count, wilful murder of Seedam Bebee; 2nd count, assaulting Seedam Bebee, and thus procuring abortion, and thereby causing the death of her male child; 3rd count, assaulting the witness No. 1, Sheikh Helaloodeen; Nos. 4 to 9, 4th count, accomplices in the above wilful murder; 5th count, privy to the above wilful murder; 6th count, accomplices in the above, assaulting Seedam Bebee and procuring abortion; and 7th count, privy to the above, assaulting Seedam Bebee and procuring abortion.

Crime Established.—Nos. 3 and 4, assaulting Seedam Bebee and thus procuring abortion, and thereby causing her death and the death of her male child, and also of assaulting the witness Sheikh Helaloodeen; No. 5, accomplice in the above crimes, and Nos. 6 to 9, privy to the assault of Seedam Bebee and also of assaulting the witness Helaloodeen.

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Case of JAMOO SHEIKH and others.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. E. Bentall, additional sessions judge of East Burdwan, on the 17th February 1852.

Remarks by the additional sessions judge.—"Helaloodeen was cutting some bamboos near his own house, to which bamboos the prisoners considered that he had no right, and they set on him and beat him. The prisoner No. 6, Hushnoo, in particular, assaulted him in a serious and offensive manner. Helaloodeen's wife, Seedam Bebee, went to his assistance, and abused the opposite party, and owing to the abetting of Bakur, No. 5, the prisoner Atim, No. 4, caught her by the hair, and Jamoo, No. 3, gave her a kick. She was eight months gone with child, and she was taken to the house of her mother, which was near at hand, and there delivered of a child which immediately died. Helaloodeen was taken the next day to the hospital, and on the following day his wife was brought there, and on the 22nd December she died. Her body was opened, and in the opinion of the sub-assistant surgeon who examined it, her death was occasioned by premature labor, brought on by some external injury, which might have been a kick. Information of the circumstance was taken to the thanna on the day that the assault took place. The gomashta of the village wrote what two witnesses, *viz.*, Jamir, No. 2, and the mother of Helaloodeen had to say, and he sent the paper to the thanna. In that paper all the prisoners are accused. The darogah went to the spot that night and took the evidence on oath of Helaloodeen and of Seedam. The former then accused all the prisoners and Seedam accused from No. 3 to No. 8. Seedam's evidence was not admitted on the trial, as when she gave it she did not expect to die, and those who were present expected that she would recover; but it corroborates the statements of the witnesses on the trial that the prisoners were all accused so early after the occurrence of the assault. There are numerous witnesses for the defence; but their names were all brought forward at a late date. The defence that Seedam had been ill for a month or six weeks, and that she had a miscarriage in the morning before the dispute about the bamboos took place, yet the medical man who attended her after she lost her child, and who examined her body said, that she appeared to have been a healthy woman, and that if she had been only a short time in labor, as is urged in defence, and had not received any external injury, such inflammation as he observed in the omentum and small intestines is not likely to have occurred. While she was under the doctor's care, she complained very much of pain, and said it was owing to her having been kicked. The magistrate was absent from the station at the time of her death; but it is to be regretted that some other officer did not take her deposition when she was *in articulo mortis*."

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Sentence passed by the lower court.—No. 3, five (5) years' imprisonment with labor, No. 4, four (4) years' imprisonment without irons, and a fine of rupees two hundred (200), or labor, No. 5, three (3) years' imprisonment without irons, and a fine of rupees one hundred and fifty (150), or labor, No. 6, one (1) year's imprisonment without irons and a fine of rupees one hundred (100), or labor, and Nos. 7, 8 and 9, each, three (3) months' imprisonment without irons, and a fine of rupees twenty-five (25), or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentences passed by the sessions judge on the prisoners *Jamoo, Atim, Hushnoo, Jakeer, Anoodee* and *Haroon*."

PRESENT:

W. B. JACKSON, Esq., *Judge*,

GOVERNMENT

versus

ZEEDOO OURUT.

1852, April 17. Case of ZEEDOO OURUT

The absence of an intent to do any bodily harm, precludes a conviction of culpable homicide.

CRIME CHARGED.—Wilful murder of Churun Chookree.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. Alexander Abercrombie, assistant, exercising the powers of joint magistrate of Jumalpore, Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 16th February 1852.

Remarks by the sessions judge.—"The prisoner had an illegitimate child seven months' old, by witness No. 5, and a trifling quarrel arising between them, he struck her a blow, on which, as proved by one of the eye-witnesses and her own admissions in the Mofussil and before the assistant, she in a fit of passion threw the child down, and falling on the top of the head, it received, as shown by the evidence of the civil surgeon, a severe fracture of the skull, which was the cause of its death. Before this court she denied having killed the child, remarking that no one would kill her own child. The *futwa* of the law officer convicts the prisoner of culpable homicide, in which I concurred."

Sentence passed by the lower court.—Five (5) years' imprisonment with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"Musst. Zeedoo, charged with murder, and convicted of culpable homicide by the sessions judge and sentenced to five (5) years' imprisonment.

"The witnesses generally prove that the prisoner is a concubine of the witness Sheikh Bublah; that he was beating her

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when *Adoo*, witness, interfered, and drew him away. Immediately afterwards they heard the sound of something falling, and looking round saw her child of seven months, which she had in her arms when beaten, lying on the ground. The child was taken up immediately, and died in about twenty minutes. The witnesses concluded that the prisoner had thrown down the child. The prisoner before the magistrate admitted that when beaten she had thrown down the child; but one of the witnesses, Musst. *Doolalee*, the only one who saw her do so, explains that she, (meaning the prisoner), let the child fall, by letting go her hold of it, not that she threw it down with violence with intent to hurt it. The child fell on the crown of its head and fractured its skull. Now the prisoner says the witness Bublah kicked her twice, and then beat her with his fist. The nature of this beating is not investigated with sufficient care as to the particulars; but it is proved that it was so severe as to make the neighbours interfere; and it may be inferred that the prisoner was suffering pain from this beating as well as feeling anger from it, and in this state, let the child fall from her arms. It is true the term used in the record is that she threw it down; but I have no doubt the meaning which it is intended to convey is, that she let it drop. With reference to the uncertainty as to the nature and extent of the injury received by the prisoner from the ill-treatment of the witness Bublah, as well as to the certainty that she was beaten and was suffering from that beating at the time, I do not consider it established that the prisoner intended to do any bodily harm to the child when she let it fall. The absence of such intent precludes a conviction of the charge of culpable homicide. I therefore reverse the sessions judge's decision, and acquit the prisoner altogether and direct her immediate release."

PRESENT:

J. R. COLVIN, Esq., *Judge.*

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

RAM SINGH (No. 1) AND HARAN GHOSE (No. 2).

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Case of RAM SINGH and another.

An up-country burkundauz, convicted of being an accomplice in a forcible assault, and seizure of *ryots*, (with a view to their being brought to receive advances for indigo cultivation,) in furtherance of which assault murder was committed, sentenced to imprisonment in banishment for fourteen years with labor in irons.

The prisoner had at first been convicted of the murder, and sentenced capitally. But upon further evidence, tendered after the passing of the sentence, a review was admitted, and there appeared to be sufficient doubt raised, upon all the proof and facts in the case, to make it just to give the benefit of it to the prisoner. The capital sentence was, therefore, cancelled, and the prisoner convicted and sentenced only as an accomplice in the illegal and violent assault, attended with murder.

CRIME CHARGED.—*Charge First.*—1st count, wilful murder of Komul Chowkeedar; and 2nd count, accomplices in the said murder. *Charge Second.*—1st count, tumultuous assembly attended with the culpable homicide of Komul Chowkeedar; and 2nd count, accomplices in the same.

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. E. Bentall, additional sessions judge of Nuddea, on the 4th March 1852.

Remarks by the additional sessions judge.—"In consequence of a difference of opinion between myself and the law officer, I have the honor of forwarding herewith, to be laid before the Nizamut Adawlut, the proceedings on the above trial.

"The people of the village of Chuppeepotah cultivate indigo for the factory of Dulle Molla, which is about three miles' distant from it, and which had lately changed its owner. The prisoner Haran Ghose (No. 2,) is a khalasee of the factory, well-known to the people of Chuppeepotah, and Ram Singh (No. 1,) had previously been in the service of the zemindar. He is a very tall strong man, and has lost one eye. Early on the 20th of January, a party of persons went to the village, and were taking off some of the inhabitants, five in number, to receive advances for indigo; and these five men are the only witnesses to what took place. They state that the chowkeedar Komul came and objected to their being taken off, and that he was at once speared by Ram Singh, at the instigation of Haran Ghose. The village contains about twenty houses, and sixty or eighty inhabitants; and the zemindar appears to have lately come into the village of Kumarpota, which is only half a mile off. When Komul was speared, the factory people at once ran off; and the

mohurir of the thanna, who soon after accidentally arriv the spot, took the deposition of Komul to the same purport as that of the five witnesses on the trial, which deposition was proved on the trial. Komul was then sent off to the station; but he died when he had travelled one *coss*. He was speared in the back between the 11th and 12th ribs, and the spear came out in front of the abdomen. It was a mortal wound, inflicted, according to the opinion of the civil surgeon, on the living man, and he could not have walked far after receiving it.

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"There was at first an attempt made to prove, that the man Komul was wounded in the village of Faropara, but no witnesses to that effect were called on the trial. Each of the prisoners endeavoured to prove an *alibi*, but their witnesses were first examined long after the prisoners were apprehended, and there is no reason for believing them in preference to the witnesses who took the prisoner's names immediately after the occurrence of the crime.

"It must be observed, that there does not appear to have been any enmity on the part of the prisoners toward Komul; that there were twenty or twenty-one persons from the factory, *viz.*, Haran Ghose and five burkundauzes, and about fifteen other persons who had not gone into the village; and that it is improbable that the chowkeedar, who did not himself cultivate indigo, should oppose such a party, even considering that the zemindar was in the neighbouring village. Then it is not likely that, for so slight an opposition as one man could offer, he should have been speared through the body. The evidence of the witnesses is all *ex parte*. They state that very early in the morning, only five men could be found in the village, which is not probable. The five witnesses are all old men with white beards, who were not likely to have been suspected of engaging in an affray, and two of them, as well as the chowkeedar, had not previously cultivated indigo. They look as if they were put forward as witnesses without the fear of being suspected of committing a riot.

"I think that there is reason to suspect that the whole truth has not been told, and that the chowkeedar was not the only man who opposed the factory people. It is true that there is no evidence of this, but, considering how difficult it is to prove such circumstances, owing to the danger which witnesses feel in coming forward, and that the defence of each prisoner is an *alibi*, I give them the benefit of the strong presumption, and find them 'guilty' of the 1st count of the second charge, and would sentence Ram Singh to fourteen (14) years, with labor in irons, and Haran Ghose to seven (7) years, with labor in irons."

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Remarks by the Nizamut Adawlut, dated the 27th March 1852.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.)—"We think that on the evidence, and especially on the deposition given *in articulo mortis* by the deceased, which was taken almost immediately after the infliction of the wound by a police mohurir, who happened to be accidentally near the spot, there can be no doubt that the deceased met his death from a spear thrust through his body by the prisoner No. 1, Ram Singh. The wound was given in furtherance of an act of illegal force and violence in the seizure of *ryots* to take them to the indigo factory; and it is not,—though in the view of the additional sessions judge it seems to be so,—material whether the seizure was resisted by the chowkeedar and the five eye-witnesses only, or by a greater number of persons from the village. Violence of this kind, supported by, and terminating in, the reckless taking of life, requires exemplary repression; and we cannot pass anything less than a capital sentence for such a crime.

"The evidence as to the second prisoner, Haran Ghose, having instigated the spear thrust has not been clear and consistent throughout the proceedings, and he was not mentioned as having instigated it in the statement of the deceased before his death. We think it only proved against this prisoner that he went with the party, of which at least the other prisoner carried the spear, and that he was an accomplice in the illegal seizure of the *ryots*, in connexion with which the deceased was slain.

"The proof brought by both prisoners to establish an *alibi* is quite insufficient. Part of it, even if it could be credited, is too vague to prove where the prisoners were on the day of the occurrence; and part of it, which speaks as to where the prisoners were *at and after* 9 A. M. of that day, is very consistent with the possibility of their having been at the scene of the outrage at an earlier hour, four *dunds* of the day, or about 8 A. M.

"We convict the prisoner No. 1, Ram Singh, of wilful murder, and sentence him to suffer death, and prisoner No. 2, Haran Ghose, of being an accomplice in assault and the forcible seizure of *ryots*, in furtherance of which murder was committed, and sentence him to imprisonment for fourteen (14) years, with labor and irons.

"After recording the above order, a petition was presented by Mr. Patrick Smith, on behalf of the prisoner Ram Singh, when the court issued the following letter, No. 467, dated 6th April 1852, to the sessions judge of Nuddea:—

"'I am requested by the Court of Nizamut Adawlut, with reference to the capital sentence passed on the 27th ultimo, on Ram Singh, transmitted to the magistrate of Nuddea, by the

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additional sessions judge, to forward to you copy of an affidavit,* and examination of Mr. P. Smith, and to direct that the magistrate be ordered by you that the capital sentence passed on Ram Singh be respited until further orders.

" 'The court direct that you take the statements of Sumboonath Gangooly and Omeschunder Mokoorjea mentioned in the affidavit, and of any other persons whom Mr. Smith may produce before you, in order especially to establish how the party of burkundauzes, who went to the village of Chuppeepotah on the morning of the 20th January, was armed, and which of them carried spears.

" 'Mr. Smith states that Mr. Montresor, the magistrate, and Mr. Archer, the medical officer, can speak to the general belief and report of the neighbourhood as to the party from whose hands deceased met his death. You are at liberty to receive

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* "I, Patrick Smith, of Hanskolly, in the zillah of Kishnagur, indigo planter, make oath and say that I have been informed of the particulars of the affray attended with loss of life, which took place at Dulle Molla Factory, in the zillah of Kishnagur, on or about the 20th of January last, and for being concerned in which one Ram Singh, together with one other man, whose name is unknown to this deponent, were committed for trial on the charge of having murdered one, 'Komul Dome Chowkeedar,' and having been tried by the moulvie and additional sessions judge of Kishnagur, were found guilty of the said charge, whose decision has been confirmed by the Sudder Nizamut Adawlut, which court has sentenced the said Ram Singh to be hanged, and has issued its warrant for his execution, and I, the said Patrick Smith, having been informed that the said sentence was passed by the said court of Sudder Nizamut Adawlut, in the belief founded on the evidence in the record of the case that the said 'Komul Dome' was killed by a blow from a spear inflicted by the said Ram Singh, do hereby solemnly depose that, I believe that the evidence given at the trial to the effect that the said Ram Singh did strike such blow and did kill the said Komul Dome is false, and I depose that I believe and have no doubt whatever of the fact that the said blow, which ultimately proved fatal, was inflicted by one Bishendel Parree, who is now in custody, the said Bishendel Parree having, on or about the said twentieth day of January last, shortly after the said affray took place, personally and voluntarily confessed to me that he had struck the said Komul Dome with the blow which caused his death, the said Bishendel Parree then affirming to me that he struck the said blow in self-defence in repelling the attack of the said Komul Dome and others, and I further depose that the said Bishendel Parree has since made the same confession to other credible parties who are prepared to depose to the same effect, *viz.*, among others to one Omeshchunder Mookerjea and to one Shumboonath Gangooly, which individuals I am prepared to produce when required."

(SIGNED) "PATRICK SMITH."

"Sworn this 5th day of April 1852, before me.

(SIGNED) "E. A. SAMUELLS,
"*Magistrate, 24-Pergunnahs.*"

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Remarks by the Nizamut Adawlut, dated the 27th March 1852.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.)—"We think that on the evidence, and especially on the deposition given *in articulo mortis* by the deceased, which was taken almost immediately after the infliction of the wound by a police mohurir, who happened to be accidentally near the spot, there can be no doubt that the deceased met his death from a spear thrust through his body by the prisoner No. 1, Ram Singh. The wound was given in furtherance of an act of illegal force and violence in the seizure of *ryots* to take them to the indigo factory; and it is not,—though in the view of the additional sessions judge it seems to be so,—material whether the seizure was resisted by the chowkeedar and the five eye-witnesses only, or by a greater number of persons from the village. Violence of this kind, supported by, and terminating in, the reckless taking of life, requires exemplary repression; and we cannot pass anything less than a capital sentence for such a crime.

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"We convict the prisoner No. 1, Ram Singh, of wilful murder, and sentence him to suffer death, and prisoner No. 2, Haran Ghose, of being an accomplice in assault and the forcible seizure of *ryots*, in furtherance of which murder was committed, and sentence him to imprisonment for fourteen (14) years, with labor and irons.

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" 'The court direct that you take the statements of Sumboonath Gangooly and Omeschunder Mokoorjea mentioned in the affidavit, and of any other persons whom Mr. Smith may produce before you, in order especially to establish how the party of burkundauzes, who went to the village of Chuppeepotah on the morning of the 20th January, was armed, and which of them carried spears.

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(SIGNED) "PATRICK SMITH."

"Sworn this 5th day of April 1852, before me.

(SIGNED) "E. A. SAMUELLS,

"*Magistrate, 24-Pergunnahs.*"

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statements from these officers, which you will forward with your report.

" 'If Bishendial Pandee should have made any confession to the magistrate, you will be pleased to call for it and forward it to the court.

" 'You will transmit your reply to this letter with all practicable despatch.'

" In obedience to the above order, the sessions judge of Nuddea submitted the following letter, No. 66, dated 14th April 1852 :—

" 'In conformity with the instructions of the court, conveyed in your letter, No. 467, dated the 6th instant, I have taken the depositions of Omeshchunder Mookerjea, Sumboonath Gangooly, and of a third person by name Ram Gopal Haldar, brought forward by Mr. Patrick Smith, which I have the honor to transmit herewith in original, to be laid before the court,

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Mr. Patrick Smith's deposition taken before Messrs. J. R. Colvin and A. J. M. Mills.

" I am a proprietor of the Dulle Molla Factory. I remember the 20th day of January. I was on that day at the Dulle Molla Factory, which is about six miles from the Chuppeepotah village. Ram Singh was an *omedwar*, hanging about the factory for employment. Between 12 and 1 o'clock of that day, I heard that a man of the Chuppeepotah village had been wounded. I heard of it from my servant Omeshchunder Mookerjea. He told me that Bishendel Parree had told him that he had been attacked by the villagers and had wounded one of them in self-defence. I believe that Bishendel Parree was accompanied by one or two other persons, of whom Ram Singh was one. I saw Ram Singh after the occurrence. Ram Singh also told me that Bishendel Parree had wounded the villager. To the best of my belief Bishendel Parree was the only man who had a spear. I have no doubt that there are persons at the factory who could speak to the fact of Bishendel usually carrying a spear, as well to which of the party carried a spear that morning. I had been out shooting that morning, and on my return saw Bishendel Parree. He himself told me that he had been attacked, and in self-defence had wounded a man with a spear. Sumboonath Gangooly is employed at an out factory. None of my servants was wounded. Mr. Hills informed me that Ram Singh had been sentenced capitally. On hearing this, I gave Bishendel into custody. Mr. Hills told me if I knew Ram Singh to be innocent, I ought to take the proper steps to save his life. I took possession of the factory about the 15th or 10th of January. I have been an indigo planter six or seven years. I understand the language. Ram Singh has only one eye. He was formerly employed under the zemindar of the Chuppeepotah village, *viz.*, Seeternath Mookerjea, and was therefore known to the villagers. Ram Singh, I heard, had some difference with the zemindar or his naib regarding a balance of wages, of which he compelled payment by rough means. I have had, and have no quarrel with the zemindar myself.

(SIGNED) " PATRICK SMITH."

" Taken before us this sixth day of April eighteen hundred and fifty-two.

(SIGNED) " J. R. COLVIN,
" " A. J. M. MILLS."

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together with the statements of Mr. Montresor* and Doctor Archer,† (also in original), called for in the 3rd paragraph of your letter under acknowledgment.

"'It having been brought to my notice by the magistrate that he had Bishendial Parree in custody on a charge of severe wounding with a spear, which weapon was in charge of his nazir, I called for it and found it tally exactly with the description given of it by the persons whose depositions I have now the honor to submit. The entire length of the spear as it now is, (for it has been somewhat reduced by an iron ball and spike which was at one end, having been broken off) measures five feet ten inches, the head, including the socket for the handle, is one foot ten and a half inches, and the blade of it, which is flat, shaped like a dagger, and both edges sharpened, is nearly eleven inches in length, and two-and-a-half inches at the broadest part, and would make a wound of between three and four inches, which, according to the *sooruthal* made by the thanna mohurir, was the length of the wound on the side of Komul Dome.

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* *From C. F. Montresor, Magistrate of Nuddea, to J. C. Brown, Sessions Judge of Nuddea, No.* 86, *dated* 13*th April* 1852.

"I have the honor to acknowledge the receipt of your letter, No. 62, with enclosures, and in reply beg to advise you that I have stopped proceedings regarding the execution of Ram Singh till further orders.

"I can make no statement as to the general belief and report in the neighbourhood as to the party from whose hands Komul Dome Chowkeedar met his death. A few days subsequent, to another man (Omesh Ghose by name) having received a severe spear wound in the back from one of Mr. Smith's burkundauzes, I heard from Dr. Archer that Ram Singh was to be executed, and that he, (Dr. Archer,) had heard that the man who had wounded Omesh Ghose, was the same man who killed Komul Dome Chowkeedar. I understood Dr. Archer to have gained this information from Mr. James Hills, was at that time at the Dâk Bangalow on his way to Nischindpoor (this was about seven weeks after Ram Singh had been put on his trial for the wilful murder of Komul Dome Chowkeedar at the sessions court.)

"Mr. Patrick Smith called on me in court on the following day (April 3rd) and on that day Bishendel Parree, who had escaped to Bansberia, was arrested by me.

"The prisoner Bishendel Parree made no confession before me."

† *From Mr. C. Archer, Civil Assistant Surgeon, to Mr. J. C. Brown, Sessions Judge of Zillah Nuddea, No.* 26, *dated* 8*th April* 1852.

"I have the honor to acknowledge the receipt of your letter, No. 63, of yesterday's date, with the extract from the letter addressed to you by the register of the Nizamut Adawlut, and in reply to inform you that I have heard from sources, the credibility of which I had no reason to doubt, that Ram Singh did not inflict the blow from which the man at Dulle Molla died, and when a wounded man was sent in the other day from Durmodoho, I heard in addition that the person who wounded him was the same that had killed the other."

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Case of RAM SINGH and another.

"'It will be observed in the accompanying depositions that the deponents have not sworn to the spear as being that which Bishendel Parree generally carried about in his hand, but only as being similar to it. This can be accounted for by the iron ball with the spike at one end having been broken off. I examined the end and found the wood cut in the usual way for fitting on a socket, and have accordingly no doubt of it being the identical weapon.'"

Final remarks by the Nizamut Adawlut, dated the 17th April 1852.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.)—"Having perused the papers transmitted by the sessions judge, in answer to the requisition of this court of the 6th instant, we admit a review of our former sentence, of the 27th ultimo, as regards the prisoner Ram Singh.

"We think that the particulars now disclosed, as deposed to by Mr. Patrick Smith and his head factory servants, raise sufficient doubt upon the evidence,—however perfectly strong and conclusive it at first appeared to be,—upon which Ram Singh was convicted of having perpetrated the murder to which the trial relates, to render it just to give the benefit of that doubt to the prisoner. We observe that it is admitted by the witnesses, now produced, that Ram Singh accompanied the party which went to seize the *ryots*, though his defence on the trial was an *alibi*.

"We cancel the former conviction and sentence as regards Ram Singh, and convicting him of being an accomplice in assault and the forcible seizure of *ryots*, in furtherance of which murder was committed, we sentence him to be imprisoned in banishment for fourteen (14) years', with labor and irons. We have in this case added the aggravation of banishment to the sentence, as passed on the other prisoner Haran Ghose, as it is clear that Ram Singh was one of the up-country burkundauzes employed on the occasion, and took a more prominent part than the other prisoner, a khalassee.

"It is our duty, in passing the above order, to record our regret that Mr. Patrick Smith did not communicate the information, which he had acquired, to the public authorities, at an earlier stage of the proceedings."

PRESENT:

A. J. M. MILLS, and R. H. MYTTON, Esqrs, *Officiating Judges.*

PURESH HUR TAUTEE

versus

SOHOCHUREE MOLLANEE.

1852.

April 17.

Case of SOHOCHUREE MOLLANEE.

Prisoner convicted of aiding and abetting in the wilful murder of a child for its ornaments, sentenced to death.

CRIME CHARGED.—1st count, theft attended with murder of Gorobinee Chokree, daughter of the prosecutor, for the sake of her ornaments (silver collar) valued at rupees 7; 2nd count, accomplice in the above-mentioned crime, and 3rd count, accessary before and after the fact.

Committing Officer, Mr. G. A. Pepper, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 2nd April 1852.

Remarks by the officiating sessions judge.—" Shortly before 10 o'clock on the morning of the 1st April, the day fixed for the trial of this case, the law officer came to my house and reported that his brother-in-law had been taken suddenly ill with cholera, and that he could not attend the sitting of the court. As other trials were coming on in quick succession, *viz.*, on the 3rd, 5th, 12th, 17th, 22nd and 26th April, it would have been extremely inconvenient to have postponed this case even for a single day; and having only lately joined this district, I was not prepared to summon a jury on such short notice. In the emergency, therefore, I requested the assistance of Moulvee Nujumul Huq, the principal sudder ameen, and Baboo Roy Govind Chund Chowdry, sudder ameen, as assessors, and proceeded to the trial of the case; the particulars of which are as follows:

" The prosecutor's daughter Gorobinee, a child of 7 years of age, lives with her grandmother Kerpamaye, at the village of Hattea, which is between 1 and 1¼ *koss* from Muddha, where the prosecutor resides. On the last day of the month of Poos, or the 12th January 1852, Lokenath Mundul came from Hattea and informed the prosecutor that his child Gorobinee Chokree was missing, and could not be found. He immediately started for the village of Hattea where he arrived about 4 ghurries before nightfall and ascertained from Kirpamaye that in the forenoon the child was playing about in the road, but had not been seen since. He then went to the zemindar of the village, Gour Huree Dutt, who called together the chowkeedars and munduls, and desired them to institute a strict search for the child. It

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Case of SOHOCHURREE MOLLANEE.

appears that the prisoner occupies a house close to that of Lokenath Mundul, and whilst the latter's residence was being examined, the prisoner came forward and suggested that her house should also be inspected. The witness Udder Tatin, niece to Kirpamaye, immediately entered it, and on putting her hand into an earthen vessel that was there, she felt the body, and immediately fell down weeping. The *gumlah* was then examined by the other parties engaged in the search, and found to contain the corpse of Gorobinee Chokree. Chowkeedars were appointed to watch, and a report was forthwith despatched to the thanna of Burdwan.

"The darogah arrived before daylight and instituted the usual inquiry and prepared the *sooruthal*. On the *gumlah* being broken, and the body exposed, the mouth was found stuffed and bound round with cloth. Marks of pressure were observed on the neck and abrasions of the skin on the legs. The body had been thrust into the *gumlah* head downwards.

"The prisoner, who is a prostitute, on being questioned by the darogah, stated that on the day before the murder, she begged her friend, one Gopaul Moittro, to furnish her with some money. He told her that he would kill Gorobinee Chokree and give her the silver collar which the child wore. On the following day he was standing outside her house, and seeing the deceased playing near, he enticed her in, and there murdered her, while she kept watch at the door; that he then gave her the collar, and put the body into the earthen *gumlah*, promising to remove it at night. She afterwards went out to procure some grass, and on her return she found a number of people assembled at her door when the discovery took place. She also produced before the darogah the silver collar from a basket in her house.

"The prisoner has been consistent in her defence throughout the preliminary investigation. Her statement before the darogah is perhaps rather more detailed and circumstantial than that before the magistrate; but it differs in no material point whatever. She has persisted from the first in implicating Gopaul Moittro, as the principal in the crime; but there is no proof whatever against him, or even of his ever having kept company with the prisoner.

"On the trial the evidence, *first*, to the finding of the body of Gorobinee Chokree in the earthen *gumlah*, and the silver collar, which she was in the habit of wearing, in a basket, in the house of the prisoner; *secondly*, to the examination of the body both in the Mofussil and by the civil assistant surgeon, and the discovery thereon of marks of pressure on the throat and abrasions on other parts of the body; *thirdly*, to the fact that death was caused by suffocation, arising from strangulation; and

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fourthly, to the statements of the prisoner before the darogah and the magistrate having been made freely and voluntarily, is perfectly clear and conclusive in every respect.

"In this court the prisoner pleaded 'not guilty,' but when called upon for her defence, she replied that she had nothing further to say. Her Mofussil and foujdaree confessions were read over to her, and she admitted having made them both.

"The assessors convict the prisoner of being an accomplice in the crime charged, in which I entirely concur. I have no doubt in my own mind that the prisoner committed the murder; but in the absence of any direct evidence sufficient to convict her as a principal in the first degree, she must be dealt with according to her confessions, which from the very first, attribute the active share of the deed to Gopaul Moittro, I, therefore, find her guilty of being an accomplice in the theft attended with murder of Gorobinee Chokree, and recommend that she be imprisoned for life in the jail of the district."

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and R. H. Mytton.)—"Though the prisoner pleaded 'not guilty' to the murder of the child, yet she admitted she was present when the foul deed was done. The body was found in an earthen vessel in her house with the mouth stuffed and bound round with cloth, and she herself produced the silver ornament, which the deceased wore round her neck. There is no proof whatever that Gopaul Moittro was the principal in the crime, or that he even kept company with the prisoner, and judging of the confessions of the prisoner before the police and the magistrate, by all the circumstances of the case, I see no grounds for believing that part of them, which charges Gopaul Moittro with the murder. I would convict the prisoner on violent presumption of the wilful murder of the deceased for the sake of her ornaments, and sentence her capitally. The crime is one of a deep dye, and there is nothing to extenuate it.

"Admitting even that the confessions of the prisoner are in all parts true, I see nothing in the case to bar a capital sentence; she admits that the murder was committed with her consent, and for her benefit, and that she watched at the door while the deed was being done. As being therefore actually present and assisting in the commission of the crime, she is liable to the same punishment as the actual perpetrator."

MR. R. H. MYTTON.—"I fully concur with Mr. Mills in looking upon this murder as one of the blackest dye, and that there is no reason for a mitigated sentence as proposed by the sessions judge.

"In the confession of the prisoner to the darogah she admitted that she assented to the proposal of her asserted paramour.

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Case of SOHOCHUREE MOLLANEE.

that the child should be murdered in order to supply her with funds from its necklace. In it also she admitted that she pointed out a cloth wherewith to commit the murder. These particulars are not given in the confession before the magistrate, but in the sessions court she has admitted recording both statements and has not denied the truth of them. Both to the darogah and the magistrate she confessed to having kept watch at her door while her paramour did the deed within.

"In the sessions court the prisoner pleaded 'not guilty' to the first charge but 'guilty' to the second, *viz.*, of being an accomplice.*

"There is no proof of what part the prisoner took in the crime except her own confessions. It is probable that she was the sole culprit, but her confessions are not to the effect that she was so, or that she was a principal in the first degree.

"On her confessions and plea in the sessions court, she is 'guilty' of aiding and abetting in the crime; and I convict her on the second count, which comprises aiding and abetting under the general term of being an accomplice. Aiders and abettors are legally liable to the same punishment as principals in the first degree; and the prisoner is fully as deserving of death for the part which her own confessions show her to have taken, as if she had been the actual perpetrator.

"Orders will issue accordingly, should Mr. Mill's concur in the finding."

MR. A. J. M. MILLS.—"I have read Mr. Mytton's minute, and do not object to the conviction of the prisoner on the second count. The warrant may therefore be prepared accordingly."

* N. B. —The sessions judge's letter is not quite correct on this point, inasmuch as it creates an impression that she pleaded 'not guilty,' to all the counts.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

DYANIDHEE RAE

versus

BHABO RAE (No. 3), ABHIN RAE (No. 4), DEB RAE (No. 5), KUNAHEE BARRIK (No. 6) AND MUDDUN DOSS (No. 7).

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April 19.

Case of BHABO RAE and others.

The prisoners charged with murder, were acquitted by the Nizamut Adawlut, in concurrence with the zillah law officer dissenting from the sessions judge.

The court remarked on the incorrect wording of the second count, and explained the distinction between an accessary before the fact and an accomplice.

CRIME CHARGED.—1st count, wilful murder of Suhdeb Rae, father of the prosecutor; 2nd count, accomplices before and in the commission of the said act.

Committing Officer, Mr. G. D. Wilkins, officiating magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 7th March 1852.

Remarks by the sessions judge.—"It appears from the deposition of Dyanidhee Rae, the prosecutor, that on Saturday, the 10th of January last, his father Suhdeb Rae, the deceased, returned to Sarra (his place of residence,) from Cuttack, where he had been some time absent making arrangements for the payment of his revenue, &c., and that his relation Sooderson Doss, who lives at Singhree, distant about half a mile from Sarra, sent word to him through the prosecutor, that he wished to see him and hear the news he had brought from Cuttack; and that on Monday the 12th idem, at about three *ghurries* of the night, or 8 o'clock, he left his house in company with his neighbour Somnath Rae, witness No. 1, and proceeded to Singhree, where he had an interview with the said Sooderson Doss; and as they were returning home and had reached some low ground known by the name of the 'Joynabad *ghoiree*,' where Suhdeb Rae was walking a few paces in advance of Somnath Rae, some persons came up behind and first struck Somnath Rae a blow on the back of the head and felled him to the ground, and then went forward and attacked and carried off Suhdeb Rae. After which two of their party conducted Somnath Rae to his house, and there left him, and his wife seeing that he had been wounded on the head, gave the alarm to the prosecutor and told him to search for Suhdeb, and he then went to Somnath Rae's house and inquired of him about his father, but finding that he was unable to speak, he went in search of his father to Singhree, and was there told, by his uncle Sooderson Doss, that he had accompanied Somnath Rae home, and he then got a *mashal*, and with a number of other persons searched the *jungle* and other places, and towards morning discovered the dead body of his father, lying naked, with the exception of a *meerzye*, or

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jacket, which covered his shoulders and back, in the Gujilo *bheel*, near some low *jungle*, about four *teers*, or bow-shots, from his house; and on the hands of the deceased were two grass ropes, and the whole of the left side of his face, including part of the nose and ear, had been cut off or eaten by some wild animal, and he placed some persons in charge of the body until the police came the following day, and forwarded it to the sudder station. It also appears, from the deposition of the said Dyanidhee Rae, that enmity existed between the deceased and the prisoners Bhabo Rae, Abhin Rae, Deb Rae, Muddun Doss and Bissumber Chotra, the brother of Deb Rae, in consequence of the deceased having taken some fish from a pond at mouza Moondeah, and that they also had quarrels about certain sums of money and *dhan* due to the deceased; and that on the very evening on which he was killed, he had caused Dhunahee Barrik, the brother of the prisoner Kunahee Barrik, to be arrested for a debt due to him.

"Somnath Rae, witness No. 1, who accompanied the deceased to Singhree, deposed that, as they were returning home, and had reached the 'Joynabad *ghoiree*,' as the moon was rising, and Suhdeb Rae was proceeding about ten paces in advance of him, Muddun Doss came up behind him and struck him a blow on the back of the head, and knocked him down on the ground, and while he was conjecturing why Suhdeb Rae did not come to his assistance, he saw Kunahee Barrik strike him with a sword, and Muddun Doss mount on his chest, after which Abhin Rae and Deb Rae came and laid hold of him (the witness), and asked him who had beat him; and on his telling them that Muddun Doss beat him, they took him under a *chatteana* tree, and on his complaining of thirst Deb Rae went and soaked his cloth in water and brought it for him to drink, and while they were thus engaged Muddun Doss came up to him and asked him what was his *bichar*, or what he intended doing? and on his telling him that whatever was his (Muddun's) *bichar* was his *bichar*, he again went away in the direction where Suhdeb was killed; and Deb Rae told him not to fear, to tell no one what had happened, and Kunahee Barrik would in the morning give him two rupees, to which he replied, by asking him, why he should tell any one? That Abhin Rae and Deb Rae, then took him by the *bheel* towards Deb Rae's house, but on the way Abhin Rae left them, saying that he was going home, and Deb Rae conducted him to his house and called to his brother Bissumber Chotra, who opened the door, and Deb Rae fetched some ashes and applied them to his head, after which he again cautioned him to tell no one, and then took him to the door of his own house, where on his calling for assistance, his wife came, and he told her to go and tell Dyanidhee Rae, the prosecutor, to search for his father and see what had become of him.

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"Witnesses Nos. 2 to 5 depose to the state of the body of the deceased at the time it was examined by the darogah, and likewise to having been present when the Mofussil confessions of the prisoner were recorded, which they state were voluntarily made.

"Witnesses Nos. 5 and 6 depose to the existence of enmity between the deceased and some of the prisoners, and No. 6 further states, that the prisoners Nos. 3, 4 and 7, in his presence, threatened to kill the deceased about a month before the event took place. Nos. 7 and 8 depose to the finding of the sword in the house of Kunahee Barrik, the prisoner No. 6, on the blade of which traces of blood are said to have been visible, and the scabbard was smeared with mud, and Nos. 9 and 11, to having seen the prisoners sitting conversing together in the village of Sarra, in the precincts of which the crime was committed, on the night of its occurrence. But the guilt of the prisoners rests chiefly on their own confessions made before the police darogah.

"The officiating civil surgeon deposed, that on the *post mortem* examination of the body held by him, he found the ribs and breast bone broken in, wounding the lungs, which was, in his opinion, the cause of death; and the entire left side of the face and head was denuded of skin and muscle, and the left eye had been extracted; and it appeared to him that the flesh of the face, &c., had been eaten by some animal after death.

"The following are abstracts of the prisoners' Mofussil confessions :—

"Bhabo Rae, prisoner No. 3, stated, that on the *mukr sunkrant*, or the 1st of Magh, at three *ghurries* of the night, while he and Abhin Rae and Deb Rae were sitting together in front of his house, Muddun Doss, Kunahee Barrik and Dhunahee Barrik came from the direction of Raharpore, and Muddun Doss called him, the prisoner, and the others who were with him, saying that he had something to communicate; and on their joining Muddun Doss and his party, Kunahee Barrik said, that Suhdeb had apprehended his brother Dhunahee Barrik, and placed him under restraint, and he in consequence was going to kill him that night; and on their asking where Suhdeb was, Kunahee Barrik said he had gone to Singhree, and he would kill him as he returned home; that he, the prisoner, and Deb Rae, Abhin Rae, Muddun Doss and Kunahee Barrik then went and sat under some cocoanut trees adjoining the Soobunnissur *mahadeb* at mouza Sarra, and at six *ghurries* of the night Suhdeb Rae and Somnath came from Singhree, the former walking a few paces in front of the other, and when they had proceeded a short distance past the *mahadeb*, and had reached some low ground known by the name of the 'Joynabad *ghoiree*' they all sallied

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forth from the *mahadeb*, and Muddun Doss struck Somnath Rae on the head and knocked him down, and Abhin Rae and Deb Rae took him to the side of the tank, and he, the prisoner, and Muddun Doss, Kunahee Barrik and Bunahee Barrik ran up and seized hold of Suhdeb Rae, and threw him down, and the prisoner held his head and hands, while Muddun Doss and Bunahee Barrik sat on his chest and beat him with their fists, and Kunahee Barrik first poked out his left eye with his sword and then with one blow cut off the left side of the face, including part of his nose and ear, and killed him; that they three then sat by the body, while Deb Rae and Abhin Rae took Somnath Rae home, and on their return, he, the prisoner, laid hold of the two hands, Bunahee and Kunahee Barrik each a leg, and Abhin Rae and Deb Rae fixed a straw rope round the body, and they all, accompanied by Muddun Doss, took it and threw it in the *salponee*, or aqueduct leading from the tank to the fields, or place of irrigation. But after it had been immersed a short time, Muddun Doss, Kunahee Barrik and Abhin Rae suggested that they had better not leave the body there, and the whole six of them dragged it thence to the Gujilo *bheel*, and then went home.

"Abhin Rae, the prisoner No. 4, stated, that on the *mukr sunkrant*, at two *ghurries* of the night, while he was sitting in his house, Kunahee Barrik, inhabitant of Raharpore, came and told him that Suhdeb Rae had seized and taken away his brother, and that he had resolved to kill him that night, and asked him, the prisoner, to accompany him, and having been told that Muddun Doss, Deb Rae and Bhabo Rae were going, he also consented to join them, and was going in the direction of Kunahee Barrik's to the Soobunissur *mahadeb*, when he saw Deb Rae, younger brother to Bissumber Chotra, standing by the nullah to the north of his house, and asked him why he was standing there; and on his replying that Kunahee had called him to kill Suhdeb Rae, they went together by the *bheel*, or across the fields to the *mahadeb*, and stood in a *kullye* field to the west of it, and Muddun Doss, Bhabo Rae, Kunahee Barrik and Bunhaee Barrik went and sat inside the temple, till Suhdeb Rae, accompanied by Somnath Rae, came from Singhree, the former being a few paces in advance of the latter, and when they had reached the 'Joynabad *ghoiree*,' Muddun Doss, Bhabo Rae, Kunahee Barrik and Bunhaee Barrik came out of the *mahadeb* and ran after them; and he, the prisoner, and Deb Rae remained where they were, and one of the said four persons having struck Somnath Rae on the head, he called out for help, and was returning towards the *mahadeb*, when the prisoner and Deb Rae laid hold of him, and took him first to the side of the tank, and thence in the direction of the *mahadeb*, and made him sit down, when he complained of thirst, and he, the prison-

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er, sat by his side, while Deb Rae went and dipped his cloth in water and brought it to him to drink, after which he and Deb Rae, each took hold of an arm and conducted him as far as the *bhur* tree by the *juleejor*, a ditch, whence he, the prisoner, went to his house, and Deb Rae conducted Somnath Rae home, and about two *ghurries* afterwards, Balanidhee Rae, the nephew of Suhdeb Rae, called him, and he accompanied the prosecutor and others to search for Suhdeb Rae, and his body was found in the Gujilo *bheel*, but he, the prisoner, did not go near it.

"Deb Rae, prisoner No. 5, stated that he was sleeping in the prosecutor's *melah*, or court-yard, whence he was called at about one *puhur* of the night by Bhabo Rae and Bunahee Barrik, and he accompanied them to the *bhur* tree, situated within the confines of the village, where they met Muddun Doss, Abhin Rae and Kunahee Barrik, who said that Suhdeb Rae had gone to Singhree, and that on his return they intended to attack and kill him; and on his, the prisoner's, objecting to accompany them, Kunahee Barrik and Muddun Doss pressed him, and he and the five other persons above-named went and sat by a *kullye* field to the west of the Soobunissur *mahadeb*, and two *ghurries* afterwards, as the moon was rising, Suhdeb Rae arrived, followed by Somnath Rae, and when they had reached the 'Joynabad '*ghoiree*,' Kunahee Barrik, Muddun Doss and Bunahee Barrik followed them, and one of the four struck Somnath Rae a blow and knocked him down; that he and Abhin went and lifted him up and seated him in the *maidàn*, and he, the prisoner, went and dipped his cloth in the tank of the *mahadeb* and gave it to Somnath Rae to drink, and afterwards took him home by way of the Sarra *bheel*, he, the prisoner, holding him by one arm and Abhin Rae by the other, and Somnath Rae having informed his wife that he and Suhdeb Rae had been beat, she called out to her neighbours for help, and he, the prisoner, went to his house and applied fire or warmth *(senk)* to Somnath Rae, and the prosecutor and others went in search of Suhdeb Rae. But he denied returning to those persons who took away Suhdeb Rae's body after conducting Somnath Rae to his house.

"Kunahee Barrik, prisoner No. 6, stated that he had been absent at Calcutta for one year, and on his return home learned that Suhdeb Rae, his zemindar, was at Cuttack; and on Wednesday, four days before Suhdeb Rae's return home, Bissumber Chotra, Bhabo Rae, Abhin Rae, and Muddun Doss came to his house in the evening, and while sitting there smoking or eating *gunja*, told him they had something to communicate which he was to swear to keep secret; and after he had made oath to do so, they informed him that they had plotted to kill Suhdeb Rae, on his return from Cuttack, whence his, the prisoner's, brother, Kunahee Barrik, had gone to fetch him; and asked him to

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accompany them, but he refused, saying that his brother would get into trouble, and they then told him to lend them a sword, as they were going to kill a sheep, and he brought the sword then before him, and gave it to Abhin Rae, and they all four went away; that four days afterwards, Suhdeb Rae returned home, and on Saturday the *mukr sunkrant*, placed two peadahs, Somnath Rae and Suhdeb Rae, over his brother Kunahee Barrik, and that on his doing so, he, the prisoner, accompanied the peadahs and paid two rupees to Suhdeb, and begged him to recall the peadahs, but he refused to do so unless he got other two rupees, and again sent the peadahs to fetch his brother, and on his refusing to obey their summons, Suhdeb himself went with the peadahs and brought Kunahee Barrik to his house, and in the evening when the prisoner went into the village, near to Sutroo Turai's house, or where the four roads meet or cross one another, he meet Bissumber Chotra, Muddun Doss and Deb Rae, and Bhabo Rae afterwards joined them there (what they did or said there is not stated), and at one-and-a-half *ghurries*, or about 7 o'clock P. M., he, the prisoner, went to Abhin Rae's house, and Deb Rae to the prosecutor's, and not having found Abhin Rae at home, he was standing near Bhabo Rae's house, when Abhin came up to him and inquired what he was doing there; and on his informing him that Suhdeb Rae had apprehended his brother, they adjourned to Abhin Rae's house, when Abhin told him to provide two rupees for the purpose of practising some act of witchcraft (*jadoo)*, and in the course of four days he would kill him; after which he and Abhin returned to Bissumber Chotra, Bhabo Rae and Muddun who remained by Sutroo Turai's house, and Bissumber Chotra proposed to him that he should somehow release his brother, and cause him to conceal himself, and then charge Suhdeb Rae with having made away with him; but he objected to do so, and Bissumber Chotra then sent Bhabo Rae to ascertain what Suhdeb had done to his brother, and on his returning and stating that he had not been beat, they all sat and smoked till three *ghurries* of the night, when Bissumber Chotra and Muddun Doss again sent Bhabo Rae to call Deb Rae from the prosecutor's house, and he having come and informed them that Suhdeb Rae, accompanied by Somnath Rae, had gone to Singhree, they resolved to kill him on his return home, and get Somnath into their power; and at one *puhur* of the night, they all, *viz.*, Bissumber Chotra, Muddun Doss, Bhabo Rae, Deb Rae, Abhin Rae and the prisoner Kunahee Barrik, went to the garden of Arut Punda, adjoining the Soobunissur *mahadeb* and awaited their return; and about half a *ghurrie* afterwards, just as the moon was rising, Suhdeb came, followed by Somnath Rae, and on their reaching the *ghoiree* or low ground between the *jungle*, they all sallied forth from Arut Punda's garden and ran after

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them, and Muddun first struck Somnath Rae on the back of the head and knocked him down, and Abhin Rae and Deb Rae ran up to him and took him by the *bheel*, or fields, towards the Sarra tank, and while Bhabo Rae seized hold of Suhdeb Rae Muddun Doss struck him with a stick or some other weapon on the head, and he fell, once calling out to Somnath for help. And he, the prisoner, accompanied by Bissumber Chotra, went to his house across the *bheel*, leaving Bhabo Rae, Muddun Doss and Deb Rae with Suhdeb Rae, and shortly afterwards Abhin Rae arrived at Bissumber Chotra's house with Somnath Rae, when Bissumber applied warmth to Somnath Rae, and told him, the prisoner, to give him five rupees not to divulge what had taken place; and he accordingly gave him one rupee and promised to give him four more the next day, and he, the prisoner, then went home at six *ghurries* of the night; and on the following day when he meet Bhabo Rae, he asked him whether he had got his sword, which he had placed on his *dhan* stack, and he informed him that he had not seen it, but when he returned home, he found it in the place indicated, and placed it in his house without drawing it from the scabbard, which had mud on it, and on the darogah's asking him for it, he produced it; and on its being unsheathed, he observed that there were marks of blood on it, &c.

"Muddun Doss, prisoner No. 7, stated, that on the evening of the *mukr sunkrant*, at about one-and-a-half *ghurries*, Bhabo Rae came to his house and called him in the name of Bissumber Chotra, and he accompanied him to a house vacated by Khutai Sahoo and there met Kunahee Barrik, Bunahee Barrik, Abhin Rae and Bissumber Chotra, and on his asking the last-named individual why he had sent for him, he said he had not done so; and Abhin Rae said it was he who had called for him, and added that Suhdeb Rae had, on a former occasion, beat him, Abhin Rae, and no notice had been taken of it, and he had now apprehended Dhunahee Barrik for a debt of ten rupees; his brothers Kunahee and Bunahee are here, let us go and attack, or seize Suhdeb Rae on the road; that he, the prisoner, then said to Abhin Rae, you owe him three rupees, will you seize and kill the person to whom you are indebted? he would not accompany him; that Abhin Rae then got angry with him, and on his asking Bissumber Chotra what he meant, he said that he had made the same proposition to him, and he also had objected to accompany him; and that he, the prisoner, was coming away, when Abhin Rae called him back and told him that he was to tell no one that he had mentioned to him that he was going to kill Suhdeb, and he became alarmed, and on pretence of going to light a cheroot at the Aloopudda Cutcherry went home, and he heard the next day from Junglee Khan peadah, that Suhdeb Rae had

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been killed and his body thrown away in the Gujilo *bheel*. But he denied that he took any part in the murder, and alleged that Abhin Rae and the other prisoners accused him of doing so in consequence of his having refused to accompany them.

"All the prisoners pleaded 'not guilty,' before this court, and state generally that the prosecutor has accused them through enmity, and tutored the witnesses, who are his debtors, and otherwise connected with him, to give false evidence against them; also that they were beat and ill-treated by the police darogah to make the statements recorded before him; but none of them was able to adduce any evidence in exculpation, or to account in any way for the death of the deceased Suhdeb Rae.

"The *futwa* of the law officer, which will be found with the record, declares that neither of the crimes charged are proved against the prisoners, and it acquits them on the following grounds, though it is admitted that suspicion exists between them, in consequence of the quarrels which existed between them and the deceased:—

First,—'That the Mofussil confessions of the prisoners cannot be admitted as legal proof of their guilt, because of their recantation before the foujdaree court, and because if they had been voluntarily made, they would have been recorded on the day on which the prisoners were apprehended.

Secondly.—'That the evidence of Somnath Rae could not be relied on, because as he is stated to have been insensible from the blow he himself received on the head, he could not have seen who mounted on the chest of the deceased, or who poked out his eye; and because it was not credible that the prisoners would first wound Somnath Rae and afterwards care for him and conduct him home.

Thirdly,—'That the evidence of the witnesses regarding the assembling of the prisoners previous to the occurrence was contradictory, and the fact of blood having been seen on the sword which was rusty could not be relied on.

Lastly,—'That the officiating civil surgeon deposed that the wound on the head of the deceased had not been inflicted with a sword, but that the flesh had been eaten away by some animal.'

"But from this verdict I dissent. For although there was only one eye-witness to the attack made on the deceased, *viz*., Somnath Rae who was wounded, and I agree with the law officer that his evidence is not altogether to be relied on in consequence of his having in all probability been stunned and stupified by the blow inflicted on the back of his head, as the prosecutor describes him to have been when he first saw him, and likewise because he, either through fear or on account of his being related to Deb Rae, one of the prisoners, (and his brother Bissumber Chotra, who, from the confessions of Kunahee Barrik, Abhin Rae

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and Deb Rae, as well as from his own admission to the effect that Somnath Rae was brought to his house on the night of the occurrence, appears to have been directly or indirectly concerned in the murder,) did not state that he recognized any of the prisoners until after the arrival of the darogah, and his deposition was not recorded until three days after the darogah commenced his inquiry into the case; and his statement evidently contains much exaggeration. The general circumstances of the case, and likewise the tenor of the prisoners' confessions before the police, which in most material points corroborate one another, and have been proved by the attesting witnesses to have been voluntarily made, indicate the prisoners to be the parties who committed the murder; and although they allege that they were ill-treated by the police to make their confessions, there is no evidence on record, nor even any grounds for inferring that the confessions were otherwise than freely and fairly made and obtained; and the prisoners were totally unable, though three of them were neighbours of the deceased, to suggest any other way in which the deceased met his death, than that which they themselves had previously represented to the darogah. With regard to the statement of the civil surgeon, his evidence regarding the manner in which the left side of the head of the deceased was denuded of flesh, is merely matter of opinion. He did not and could not state positively how the flesh had disappeared; and as it is manifest from the wet state in which the *meerzye* or jacket of the deceased was found, that the body, as stated by the prisoners, had beeen immersed in water immediately after the murder, it is not very surprising that no trace of blood having flowed from the wound, was visible on the neck or shoulders; and if, as supposed by the civil surgeon, and stated by the individual who first communicated the intelligence of the death of the deceased at the thanna, the flesh had been eaten away from the face by wild animals, a wound may have first been inflicted by a sword, and the flesh afterwards eaten away by some animal; for it is more than probable, that an animal would first attack that part of the body which was cut or wounded. Under these circumstances, I would convict the prisoners Bhabo Rae, Abhin Rae, Deb Rae and Kunahee Barrik on their own confessions, (and the general circumstances of the case) of being accomplices in the wilful murder of Suhdeb Rae, and with reference to the parts severally taken by them, sentence Bhabo Rae and Kunahee Barrik to imprisonment for life in transportation beyond sea, and Abhin Rae and Deb Rae to fourteen (14) years' imprisonment, with labor in irons, and Muddun Doss, whom I would also convict on his own confession of privity to the murder, I would sentence likewise to fourteen (14) years' imprisonment with labor in irons; for although the

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part taken by him, according to his own admission, amounts only to privity, he is represented by the other prisoners as having been one of the principals in the murder."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—" I concur with the law officer in thinking that the evidence is insufficient for conviction. The evidence of the single eye-witness, Somnath Rae, is not worthy of credit. Had he identified the prisoners, he would doubtless have made known what he alleges he saw, on that night or the following day. The murder was committed on the night of the 12th. The darogah arrived on the afternoon of the 13th, and it was not till the 15th that the witness spoke to the identity of the persons who had wounded him and killed the deceased. There are, too, great improbabilities in the account he gives of the murder.

" The only other direct evidence against the prisoners is their Mofussil confessions, and as they were taken a considerable time after the prisoners were apprehended, and had denied their guilt, no reliance can be placed on them. The prisoners must be acquitted for want of proof and be immediately released.

" The sessions judge will draw the attention of the magistrate to the incorrect wording of the second count of the charge. An accomplice cannot, in the legal sense* of the word, be an accessary before the fact. An accomplice is he who aids and abets personally in the commission of a felony, an accessary before the fact, is he who, absent at the time of the commission of a felony, procures and abets another to commit it."

See Circular Order, No. 8, of Vol. IV.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

HURI BHOONIA

versus

NUGWA BHOONIA.

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Case of NUGWA BHOONIA.

The prisoner killed his wife, taxing her with infidelity, of which there was no proof, but at the same time, no assignable motive for the act. He was, therefore, although convicted of murder by the Nizamut Adawlut, in opposition to the finding by the sessions judge, of culpable homicide, sentenced only to transportation for life.

CRIME CHARGED.—Wilful murder of Musst. Kookree, his wife.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 17th March 1852.

Remarks by the sessions judge.—"On the evening of 2nd February last, an alarm was set up by Bundhoo (witness No. 1), a next door neighbour of the prisoner, which was responded to by Bhagrut (witness No. 2,) a road chowkeedar, and Munear Doosad (witness No. 3,) who running up, found and apprehended the prisoner inside his house, in the act of having beaten his wife to death with a clod of earth, weighing seven to eight pounds, apparently piece of a mud wall almost as hard as stone. The deceased lingered senseless and died during the night. Information of the event was given, and the prisoner made over to the police early the next morning.

"Bundhoo (witness No. 1) deposes, that he had just returned home from work, and saw the prisoner beating his wife in the court-yard of his house, and thence pulling her into the house. He set up an outcry, which brought up witnesses Nos. 2 and 3, who depose to the prisoner's apprehension as above stated.

"The Mofussil inquest notes upwards of thirteen external marks of violence on the deceased's body; and Doctor Diaper found deep wounds jagged and incised about both eyes (the right one penetrating to the bone of the right temple). A deep lacerated wound, two inches long, at the apex of the head, completely separating the scalp from the surrounding parts. Left forearm broken; and other lacerated wounds. On dissecting off the scalp there was a great effusion of blood between the skin and pericranium. On opening the skull, the brain was found engorged with the blood, and its covering membranes adhering to its surface, and there was great effusion of blood in its cavities. Having seen the hard clod of earth produced in court, he is of opinion that the injuries above described might have been caused by it.

"The prisoner when apprehended, and subsequently both before the police and law officer in charge of the magistrate's court, confessed to having committed the deed as deposed to,

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consequent on his having caught the deceased in the act of adultery with Nunwa, their nephew, who escaped. Before this court he pleaded 'not guilty,' repeating, however, the same particulars, and absurdly accounting for the deceased's death by Nunwa's striking her when running at him, the prisoner. He called no witnesses.

"The *futwa* of the law officer under the Mahomedan law, from the means of violence he had recourse to, acquits the prisoner of wilful murder, but convicts him of culpable homicide, and declares him liable to punishment in a high degree for the price of blood by '*deeyut mooghulzah.*'

"The prisoner's confessions are upheld by his weak defence before this court, which so far confirm the circumstances then confessed to, with the sole exception of his having beaten the deceased, whilst at the very least, according to the autopsy, the deceased could never have come by her death in the manner he pretends before this court. The deceased was brutally beaten to death, in the most barbarous manner; but, according to the habits of persons of the prisoner's class, he would as naturally have armed himself, and perpetrated the deed with such a clod of earth as with any other weapon. The adultery itself rests solely on the prisoner's assertion. Nunwa denies it; no one knows, or will depose to any knowledge of it, or the existence of any intimacy between him and the deceased; although the prisoner, on each occasion, has declared, that he had suspected the intrigue the last four or five years. His son, the prosecutor, and witness No. 1, the only professing eye-witnesses of the commencement of the occurrence, depose, whilst beating the deceased, he accused her of having intrigued with Nunwa, and she made no reply. Both swear that they did not see Nunwa on the occasion; what the first witness, No. 1, saw of the occurrence was the prisoner beating his wife in his court-yard, and dragging her thence inside his house. No better evidence seems procurable, as it is said none of the other men of the hamlet had up to that time returned home from their work. I find nothing, therefore, either in the evidence or circumstances of the case to support the homicide as justifiable; at the same time the presumption appears strong, that the act must have been committed on some sudden irritation, caused by suspicion of his wife's fidelity. The deceased is described as thirty-five years of age, the prosecutor, her son, is upwards of thirteen years of age, and heretofore the parents are said to have lived happily together. The prisoner had but just returned home from work, and without preparing for his dinner, at once committed the deed. Under all the doubts attending the case, I convict the prisoner of aggravated culpable homicide, and recommend his being sentenced to fourteen (14) years' imprisonment in banishment with labor in irons."

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Case of NUGWA BHOONIA.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"There is no room to doubt the guilt of the prisoner. The judge has found him guilty of culpable homicide only, but adverting to the nature of the weapon used, the number of the wounds, and the brutal violence of the act, I consider the offence proved against the prisoner amounts to murder. Not satisfied with striking her several blows with a club in the court-yard, he dragged her by the hair into the house, and was seized in the act of beating her to death with a piece of mud wall weighing seven or eight pounds. The deceased was found in a senseless state, and died in the night. It can only be inferred from these acts that the prisoner deliberately intended to take her life.

"The prisoner pleads that he caught his wife in an adulterous intercourse with her nephew, and two witnesses depose to the prisoner taxing her with being unfaithful to him while he beat her, though there is no proof whatever of this plea, yet there is, on the other hand, no assignable motive for the murder. It is, however, very possible that the prisoner may have received serious provocation from the deceased, and, giving him the benefit of the doubts arising therefrom, I remit the last punishment of the law, which has been otherwise justly incurred, and sentence the prisoner to imprisonment for life in transportation."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

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Departure from the rule requiring police officers to forward prisoners within 48 hours of their apprehension, should not be allowed without good reason. But detension beyond that period does not necessarily invalidate a confession.

RADHAKISTO SHAH

versus

SHEIKH PAKHALEEA (No. 6), BEDESHEE (No. 7), SHEIKH MUTEEA (No. 8), SHEIKH SHATKA (No. 10), ROHEEM KHAN (No. 11), SADOO SIRKAR (No. 15), HAFIZ (No. 16), SHEIKH KADERBUXSH (No. 17), RAMSOONDUR KURMOKAR (No. 18) AND BYKUNT GOPE (No. 21).

CRIME CHARGED.—1st count, Nos. 6, 7, 8, 10, 11 and 15, dacoity on the premises of the prosecutor and plunder of property to the amount value of rupees 2,424-6-1, belonging to the prosecutor, and wounding Musst. Poreshmonee, aunt of the prosecutor, and one Sheikh Dagoo; 2nd count, Nos. 6, 7, 8, 10, 11, 15, 16 and 17, accomplices in the above crime; and 3rd count, Nos. 6, 7, 8, 10, 11, 15, 18 and 21, knowingly receiving or keeping property acquired by the said dacoity.

CRIME ESTABLISHED.—Nos. 7 and 8, dacoity attended with slight wounding and plunder of property; Nos. 16 and 17, aiding and abetting in the dacoity, and Nos. 6, 10, 11, 15, 18

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and 21, knowingly receiving and keeping property obtained by dacoity.

Committing Officer, Zyanooddeen Hossein, deputy magistrate of Manickgunge, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 16th January 1852.

Remarks by the sessions judge.—"The particulars of this case are as follows:—

"On the night of the 29th of April last, after the prosecutor and his family had retired to rest, a number of dacoits, about thirty, attacked his house, slightly wounded his aunt, and ransacked and carried off the contents of five chests, consisting of gold and silver ornaments and cash, to the value altogether of rupees 2,424-6-1. The dacoits rejected the brass utensils and strewed them about the yard. They had no *mussals* and were not recognized. The next day the prosecutor's servant, Sheikh Buddoo, (witness No. 1,) reported the case at the thanna, and on the 30th April, the mohurir repaired to the spot. Two lists of the plundered property were prepared and forwarded to the deputy magistrate of Manickgunge, on the 2nd and 9th of May; a *sooruthal* also, it would appear, was made on the 1st May, but this document was not forwarded to the deputy magistrate until the 13th of July. The darogah, after remaining in the village for about fifteen days, went in the direction of thannas Shazadpore and Serajgunge, a quarter which is reputed for bad characters. On about the 16th May, the prosecutor, who is a *mahajun*, had occasion to go to the village of Cholabakla, and he there learnt that Pakhaleea (prisoner No. 6), had taken up his abode in the said village very recently, and the villagers suspected him of being a bad character. This information the prosecutor imparted to the darogah, whom he told of his suspicions against the prisoner. The prisoner was then apprehended, and his house searched, but no valuables were *then* found in his possession. He denied being concerned in the dacoity, but implicated prisoners Nos. 7 and 8, who were apprehended and confessed. Their confessions criminated others, and led to the apprehension of all the prisoners, who, with the exception of No. 10, all confessed before the police. The prisoner No. 6, I find, was apprehended on the 18th of May, but he was not forwarded to the deputy magistrate until the 4th of June. Indeed, I find that all the prisoners, with the exception of Nos. 21, 22 and 23, were unlawfully in the custody of the police, some for eight days, others for twelve, and so on. I, therefore, could place no reliance whatever in the said-to-be Mofussil confessions. Rejecting, therefore, these confessions, I acquitted prisoners Nos. 9, 12, 13, 14, 19, 20, 22 and 23, as there was no other proof against them. The *nuth*, or ornament for the nose, found in the possession of

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prisoner No. 12, was satisfactorily proved to belong to his wife, and I ordered it to be restored to him. The evidence against the prisoners, whom I have punished, (ten in number), consists of the confessions of prisoners Nos. 7, 8, 16 and 17, before the deputy magistrate, and of the fact of portions of the plundered property being found in the possession of prisoners Nos. 6, 7, 10, 11, 15, 18 and 21. I shall presently notice each prisoner separately; and in the meantime, I think it proper to offer a few observations in regard to the evidence for the prosecution. In the first place there were only two witnesses to the fact, both of them servants of the prosecutor, and although there is no doubt of the dacoity having taken place, still the testimony of two or three additional disinterested witnesses would have given greater weight to the fact. The witness No. 1 was such a simpleton, that it was with difficulty that anything connected with the case was elicited from him by the court. In the next place there were no witnesses to the *sooruthal* describing the appearances after dacoity, as required by Section XV., Regulation XX. of 1817. I did not postpone the trial for these witnesses, as there were no less than one hundred and fifty witnesses in the case in attendance, I therefore, proceeded with the trial and sent for the witnesses to the *sooruthal*. They arrived shortly after the evidence for the prosecution had been heard, but before the defence was commenced, and they have been entered in the calendar agreeably to Circular Order. Their evidence described the appearances after the dacoity. The property recovered amounted to rupees nine hundred and seventy-five and five annas (975-5-0) including cash; and the different articles were identified as belonging to the prosecutor, excepting the cash, and the melted pieces of gold and silver. I will now give a brief statement of the grounds on which each of the ten prisoners above alluded to has been punished. Prisoner No. 6 denied before the deputy magistrate, he also denied before this court, in which the evidence of three witnesses was taken on his behalf. Their evidence, however, in no way exonerated him. His wife, in the presence of the witnesses to the search on the 7th June, produced sixty-nine articles (jewellery, gold and silver,) of the plundered property, which were hidden under ground, in an earthen pot close to his house. As the articles corresponded with those entered in the lists of the stolen property, which were received by the deputy magistrate, on the *6th and 13th May*, there was no reason to believe that the said articles had been surreptitiously deposited where they were found. This prisoner evidently had the lion's share of the spoil. The witnesses to the search before the deputy magistrate, identified all the above articles as those which were found in their presence.

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Before this court, they identified only twenty-two articles. To expect two or three villagers to identify sixty-nine articles, which probably they inspected for five minutes, after the lapse of six or seven months, (as in the present instance, the sessions not having been held for that period,) is to expect an impossibility. The articles were identified by the servants of the prosecutor as belonging to him. The prisoners Nos. 7 and 8 confessed before the deputy magistrate, and their confessions have been properly attested. Before this court they retracted their confessions and said they had been maltreated by the darogah; some of the plundered property was found in the possession of prisoner No. 7, but it was not claimed by him. In their confessions they admit that they were present at the dacoity.

"Prisoner No. 10 denied before the deputy magistrate and said that the broken *nuth* (or ornament for the nose) produced by his mother was not his property. Before this court, he also denied but claimed the ornaments. One of his witnesses identified the ornament as belonging to him; but as he, (prisoner,) failed to reconcile the discrepancy between his statement before the magistrate and this court, in regard to the ornament, I could not admit his claim to it, nor especially as it was found concealed under ground.

"Prisoner No. 11 denied before the deputy magistrate. He also denied before this court, and claimed the cash, rupees fifty-four, found in his house, but the other articles found there and under the ground he did not claim. The cash of course was not susceptible of identity, but it was found, with other articles of the prosecutor's, concealed under ground near the prisoner's house, the presumption was that the cash was also the prosecutor's.

"Prisoner No. 15, before the deputy magistrate and this court, denied and tried to prove an *alibi*, but he entirely failed to do so. He also, before the deputy magistrate and this court, claimed the property found in his possession, and said that on a former occasion the said property had been made over to him by the magistrate of Serajgunge in another case. On looking at the list of articles made over to him by the magistrate of Serajgunge, I found that they in no way corresponded with those which he claimed at the trial. He in this court also stated, although he made no mention of the circumstance to the deputy magistrate, that he had sold rupees sixty worth of gold and silver ornaments to one Bykunt Gope, prisoner No. 21. His witnesses, three in number, did not identify the property as belonging to him. In addition to the above proof, the following circumstantial evidence proved irresistibly to my mind the guilt of the prisoner. Among the articles which he claimed was a bracelet, but unfortunately for him, the fellow to it was found in the possession of

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prisoner No. 6. The bracelets corresponded exactly in *size* and *design*, and there was no mistaking them to be a pair. The only difference, if difference it can be *called*, between them was, that the one found in the possession of the prisoner had been denuded of its outer ornamental rim. I have made a drawing of the bracelet and filed it with the *nuthee*. Prisoners Nos. 16 and 17 confessed before the deputy magistrate, and their confessions have been properly attested. Before this court they retracted their confessions, the former tried to prove an *alibi*, but he failed to do so, and the latter's witnesses said nothing which exonerated him from the charge on which he was committed. The prisoners' confessions amount to aiding and abetting in the dacoity.

" Prisoner No. 18 denied before the deputy magistrate, and claimed the melted silver and gold found in his possession. Before this court he also denied, but stated that all the silver, which Shatka, (prisoner No. 10) had given him to make into ornaments, had been made over by him to the police. Before the deputy magistrate, it will be observed, he made no allusion whatever to Shatka having given him any silver to make into ornaments. The discrepancy, therefore, between his two statements left no doubt in my mind of his guilt. The prisoner is a *kurmokar*, or silversmith, and it is a well-known fact that this class of artificers throw the greatest obstacles in the way to the discovery of dacoity and of property plundered by it. How seldom is it that one-tenth of the property, especially when jewellery, plundered by dacoity, is recovered; but the reason is obvious; the *kurmokars* are in league with the dacoits, and when gold and silver ornaments are lodged with them, the ornaments are soon converted into lumps of gold and silver, as the case may be, and thus all hope of identifying them is brought to an end, provided the *kurmokars* can only account for their ill-gotton spoils, which with a venal police is no difficult matter. If the legislature could only devise some law for this class of receivers of stolen property, dacoity, I think, would soon be on the wane.

" Prisoner No. 21 denied before the deputy magistrate and also this court, and urged that on the security of Itafez Sirdar, he advanced rupees sixty to Sadoo Sirkar, prisoner No. 15, on his depositing with him some gold and silver ornaments, which, if not redeemed within eight days, were to be melted down. This prisoner is of the *gowalah* caste, and his story was too lame to satisfy me. It is well-known that gold and silver ornaments are always pledged for considerably less than their value, and the pledgee, if not a *kurmokar*, is too glad to keep them, if honestly obtained, in order to adorn the person of his better half; but the fact of the prisoner having caused the ornaments to be

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melted in such a *hurry* satisfied me of his knowledge that they were stolen. I have punished the prisoners as indicated in column 12. I ordered the restoration of all the recovered property to the prosecutor, with the exception of the ornament No. 53, which I directed to be returned to its owner.* I cannot say that the deputy magistrate exercised a proper supervision over the proceedings of his police. I have pointed out to him the irregularities which I have here noticed, and have sent him instructions for his future guidance. I tried the case under Act XXIV. of 1843."

Sentence passed by the lower court.—Nos. 6, 7, 8, 10, 11, 15, 16 and 17, each ten (10) years' imprisonment with labor and irons; No. 18, three (3) years' imprisonment with labor and irons, and No. 21, three (3) years' imprisonment with hard labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" All the convicted prisoners in this case have appealed. Those noted in the margin complain that their witnesses were not summoned and their pleas not considered. This is untrue. The usual interrogation after commitment as to what witnesses they wished to have produced at the trial, was put, and the attendance of those witnesses was caused, and a sufficient number were examined. They were generally witnesses to character and in some instances to pleas of *alibi*. They did not give such evidence as would have justified an acquittal. Sadoo, No. 15, asserts, that he was going to bring an action for damages against the prosecutor in consequence of his causing his house to be searched, which induced the prosecutor to turn the tables upon him and to swear to his (prisoner's) ornaments being his own; that at the time of the dacoity he was at Serajgunge as a witness in a murder case, and that the property, which he sold to Bykunt Gope, and which is now claimed by the prosecutor, was so sold in the presence of a burkundauz some time previously. I observe that the witnesses, whom the prisoner cited to the magistrate, were summoned and examined at the sessions. In addition to the strong proof of guilt adverted to by the officiating judge, this prisoner made a most circumstantial confession to the darogah, which was proved to have been voluntary and led to the recovery of a considerable portion of the plundered property.

6. Pakhaleea.
11. Roheem.
7. Bedeshee.
8. Muteea.
16. Hafiz.
17. Kader.
10. Sheikh Shatka.

" I do not consider good the reasons given by the officiating judge, for rejecting all the confessions before the darogah. It is a wholesome rule that prisoners shall not be detained more than forty-eight hours after apprehension, and no deviation from it

* *Vide* my remarks above in regard to those whom I acquitted.

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should be permitted without very good reason, but it does not follow, that if they are detained longer, their confessions are to be rejected. The darogah had reported his proceedings to his superior and apprized him at a very early stage, *i. e.*, on 20th May, that he could not send the prisoners in as soon as he apprehended them, on account of his being a long way from his thanna in another zillah, and with only three burkundauzes to do all his work. This excuse for non-conformity with the rule, if true, and I see no reason to doubt it, was admissible.

"Ramsoondur Kurmokar, No. 18, in his appeal asserts, that the silver and gold found in his possession was his own and that his witnesses were not sent for. The silver and gold found in this prisoner's possession was not capable of identification, and the officiating judge convicted him of receiving and having in his possession the plundered property knowing it to be so, because his defence before the magistrate was at variance with that before the sessions court. This is not a sufficient ground for conviction, but his confession to the darogah, which I see no reason to reject, affords ample ground. In this he says that the prisoner Shatka sold him a number of silver and gold ornaments, which he enumerated, and that he melted it, and on hearing that Shatka had been apprehended in a case of dacoity, he buried it. He admitted also that he had once before been tried for receiving from the prisoners Shatka and Russolooddeen. Guilty knowledge is clearly inferrible from this. The averment regarding his witnesses not being sent for is untrue.

"Bykunt Gope in his appeal urges similar pleas. But he admitted in the magistrate's court, that he received in pawn a number of ornaments from a person he did not know, who was introduced to him by one Habil. This purchase from a stranger, and almost immediate causing the ornaments to be melted down, affords a strong presumption of guilty knowledge; and Sadoo's Mofussil confession shows that the ornaments he sold to this prisoner were ornaments obtained in this dacoity. The appeals of all the prisoners are rejected.

"The court desires to be furnished with a copy of the officiating sessions judge's instructions to the deputy magistrate, alluded to in the concluding part of the remarks on the abstract statement, and of any explanation which the deputy magistrate may have offered."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

NOOR BUKSH (No. 3), MORAD BUKSH (No. 4), ALLA BUKSH (No. 5), SHONAH GAZI (No. 6) AND ABIR MAHOMED (No. 7).

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The Nizamut Adawlut did not consider that perjury had been committed by the prisoners, as they were not cited as witnesses by either party in the case, and it was not proved that they had even sworn falsely.

CRIME CHARGED.—Nos. 3 to 6, perjury, in having on the 27th December 1851, corresponding with 13th Poos 1258 B. S., deposed, under a solemn declaration taken instead of an oath, before the principal sudder ameen of zillah Tipperah, that 'Abir Mahomed, son of Dengoo, was a cousin (son of paternal 'aunt) to Shonah Gazi, plaintiff,' such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case, and No. 7, subornation of perjury, in having caused the prisoners Nos. 3, 4, 5 and 6 to depose falsely as above.

Committing Officer, Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, officiating sessions judge of Tipperah, on the 29th March 1852.

Remarks by the officiating sessions judge.—"The necessity for troubling the court with this reference arises from a difference of opinion between the Mahomedan law officer and myself as to the indictment being maintained against four of the five accused. He is of opinion that they are guilty, while I think the contrary, and would acquit them. The case is peculiar, and to render its merits clear, a somewhat full detail is necessary.

"On the 14th of October last, Shonah Gazi petitioned the magistrate, complaining of assault and robbery of rupees two by Abir Mahomed, (prisoner No. 7), son of Arip, Noor Buksh (prisoner No. 3), Morad Buksh (prisoner No. 4) and others.

"On the 24th idem, the principal sudder ameen, to whom the trial of the case was assigned by the magistrate, took the statement of the plaintiff and the evidence of two witnesses, Bhela Gazi and Abir Mahomed, son of Dengoo, and on the following day directed the attendance of Abir Mahomed, (prisoner No. 7) son of Arip, and three others of the accused, to answer the charge against them.

"On the 11th of December Abir Mahomed, (prisoner No. 7), the son of Arip, presented himself, at the principal sudder ameen's court, and filed a petition denying the charge against him, which he attributed to hostility on the part of the plaintiff and his witnesses, and stating that the evidence given by Abir Mahomed, the son of Dengoo, was entitled to no confidence,

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inasmuch as he had concealed the material fact that he is related to the plaintiff Shonah Gazi, his mother being Shonah Gazi's paternal aunt. He added that if the police darogah were directed to inquire into this point, the result would surely verify the petitioner's statement, and at the same time disprove the alleged assault and robbery.

"The thanna mohurir was consequently deputed to ascertain on the spot whether the asserted relationship between Shonah Gazi and Abir Mahomed, the son of Dengoo, did or did not exist. Arrived there, he took the statements of Noor Buksh (prisoner No. 3), Morad Buksh (prisoner No. 4), Alla Buksh (prisoner No. 5), Shonah Gazi (prisoner No. 6) and four others, and reported on the 23rd of December that Abir Mahomed, the son of Dengoo, and Shonah Gazi were related in the degree specified by Abir Mahomed, the son of Arip, and that the first was guilty of the fact of concealing this relationship when giving his evidence in Shonah Gazi's case.

"Abir Mahomed, the son of Dengoo, now assumed the position himself of an accused person, and the principal sudder ameen sent for and took the evidence on solemn affirmation of Noor Buksh (prisoner No. 3), Morad Buksh (prisoner No. 4), Alla Buksh (prisoner No. 5), Shonah Gazi (prisoner No. 6) and Dil Mahomed, who repeated their statements as to the existence of the asserted relationship between Abir Mahomed, the son of Dengoo, and Shonah Gazi. Abir Mahomed, the son of Dengoo, was at the same time put on his defence, denied wilful concealment of this relationship while giving his evidence in Shonah Gazi's case, naming certain witnesses to prove that the connexion did not exist. *On the same day* Shonah Gazi presented a petition before the principal sudder ameen, begging that his charge against Abir Mahomed, the son of Arip, might be struck off the file and all proceedings stopped, as the cause of quarrel between them had been adjusted.

"The principal sudder ameen rejected this petition, recording on its reverse that its prayer could not be complied with, in consequence of the thanna mohurir having reported that the petitioner and Abir Mahomed, the son of Dengoo, his witness, were related. He at the same time directed the attendance of the witnesses named by Abir Mahomed, the son of Dengoo, as qualified to prove that no relationship existed between himself and Shonah Gazi.

"These the darogah accordingly sent in. They appear in the calendar of commitment also, as Nos. 39, 40, 41, 42, 43 and 44. They deposed that there was no relationship between Shonah Gazi and Abir Mahomed, the son of Dengoo. At the same time the latter again petitioned the principal sudder ameen,

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requesting that a second local inquiry might be instituted through the police, and the principal sudder ameen, who appears to have become puzzled by the conflicting evidence on this point, recommended to the magistrate that the petitioner's request should be complied with.

"Accordingly, on this occasion, the magistrate deputed his nazir, who, on the 22nd of January, reported that the alleged relationship between Abir Mahomed, the son of Dengoo, and Shonah Gazi had not been proved. He appears to have founded this opinion on the statements of all the witnesses whose names appear in column 12 of the calendar. But besides those individuals he took the statements of two, Mahomed Asgur and Dellawar Alee, who had heard that Shonah Gazi and Abir Mahomed were related, but had learnt it from the prisoners now charged with perjury.

"The principal sudder ameen sent for these witnesses and took their evidence, which was similar in all respects to that gathered by the nazir, and on the same day directed the darogah to send in the prisoners Nos. 3, 4, 5 and 6, who, it will be borne in mind, deposed on solemn affirmation to the relationship between Shonah Gazi and Abir Mahomed, the son of Dengoo, and who were now to assume in their turns the position of defendants on a charge of perjury, and prisoner No. 7, Abir Mahomed, the son of Arip, on that of subornation of perjury.

"They were sent in, their defences, with the exception of that of Abir Mahomed, the son of Arip, taken, which corresponded strictly with their previous evidence, and the case was then referred to the magistrate.

"The magistrate took the answer of Abir Mahomed, the son of Arip, on the charge of subornation of perjury. He strongly denied it and stated that he had heard and believed that Abir Mahomed, the son of Dengoo, and Shonah Gazi were related, as he had represented them to be in his petition to the principal sudder ameen.

"The magistrate on this committed the prisoners Nos. 3, 4, 5 and 6, on the charge of perjury, and the prisoner No. 7 on that of subornation.

"They all pleaded 'not guilty.'

"The evidence for the prosecution consisted of the mohurir, who recorded the evidence of the prisoners Nos. 3 to 6, when they attended the principal sudder ameen's court as witnesses, and of eighteen residents in the same or an adjoining village. The testimony of these witnesses disproved the existence of relationship between Shonah Gazi and Abir Mahomed, the son of Dengoo.

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"The prisoners' defence was generally that the relationship did exist, or that they believed it to exist; that Shonah Gazi's complaint of assault, &c., originated in a quarrel relative to eating and drinking together.

"The Mahomedan law officer acquitted the prisoner No. 7, Abir Mahomed, the son of Arip, charged with subornation of perjury, but found the prisoners Nos. 3, 4, 5 and 6, guilty of perjury.

"In his acquittal of prisoner No. 7, Abir Mahomed, the son of Arip, I entirely concur. But I do not agree with the Mahomedan law officer in the conviction of the remaining prisoners.

"To constitute the crime of perjury, it is necessary to show that the witness swore not only falsely, but corruptly, wilfully, and against his better knowledge, on a point material to the case in which the deposition has been taken.

"In the present instance it is necessary to consider how and in what case the accused became witnesses. Shonah Gazi's they were not. His case had been completed by the evidence of Bhela Gazi and Abir Mahomed, the son of Dengoo. But a question arising as to the value the latter's evidence bore, in consequence of the individual accused by Shonah Gazi alleging that the two were related, the statements of the accused were taken in the Mofussil by the thanna mohurir on that point simply, and without reference to the asserted assault and robbery. When at a subsequent stage of the principal sudder ameen's inquiries, that officer's doubts as to the relationship between Shonah Gazi and Abir Mahomed, the son of Dengoo, were revived, he sent himself for the accused, who throughout appear to have been forced into the case, and required from them a statement on solemn affirmation. This they gave, repeating what they had told the mohurir.

"But admitting this to be a case coming within the provisions of Regulation II. of 1807, Section IV. Clause 1, which at least I doubt, it is necessary to satisfy the court, not only that the alleged relationship between Shonah Gazi and his witness Abir Mahomed, the son of Dengoo, did not in reality exist, but that the witnesses deposing to it were not under an impression that the two *were* related, and that their depositions were knowingly and intentionally false.

"Prisoner No. 7 was the first to suggest a local inquiry through the police. This is not the act of a man who feared full inquiry into the truth of his assertions. The inquiry made by the police mohurir so fully corroborated the asserted relationship, that Shonah Gazi and his witness Abir Mahomed, the son of Dengoo, were placed on their defence. Shonah Gazi now petitioned for leave to withdraw his complaint against Abir Ma-

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homed, the son of Arip, a measure which looks as much like desiring to avoid further inquiry, as the latter's petition did of a wish that the asserted relationship should be fully ascertained.

"It is true that the witnesses for the prosecution depose that Shonah Gazi and Abir Mahomed, the son of Dengoo, are not related. But the antecedents of the case are such as to render it very questionable, whether this positive avowal is not in a considerable degree the result of the course pursued in fixing on the prisoners the crime with which they are accused. The deputation of a police mohurir in the first instance, and of so important an officer as the magistrate's nazir in the second, had given to the case a degree of notoriety and importance, which was likely to excite great caution and some fear. The relationship alleged by the prisoners to exist between Shonah Gazi and Abir Mahomed, the son of Dengoo, is not very near, Abir Mahomed's mother is stated to be Shonah Gazi's father's sister; and although the evidence for the prosecution contradicts even this degree of relationship, it seems quite credible that the prisoners may have heard and believed that it existed, and that the witnesses to the contrary might have been less positive if less prepared by circumstances, and less apprehensive of being implicated by expressing uncertainty on the subject.

"I am not satisfied that any wilful perjury has been committed, and would, therefore, acquit the prisoners Nos. 3, 4, 5 and 6. The magistrate would, I think, have exercised better discretion in not committing the prisoner No. 7, Abir Mahomed, the son of Arip, at all. The remaining prisoners deposed certainly in support of an assertion of his, but not as *his* witnesses, or at all at his instigation. I may add that I think the case has been much forced on the principal sudder ameen's court, by resorting to unnecessary local inquiries which are too common in this district. The evidence of few witnesses in few cases would bear such close scrutiny; and it is quite within the power of the officer hearing such cases as the present, to judge for himself, without calling in the assistance of police *omlah* and local investigation. If such aids are resorted to, however, it appears to me scarcely just that the parties who furnished information to the officer making the first inquiry, with no proved or even apparent ill-intent, should be indicted for perjury, because they are contradicted by those who were questioned on the second occasion."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I concur with the sessions judge in acquitting the prisoners. If a witness should maliciously swear falsely as to the degree of relationship in which *he* stood to the person on whose behalf he gave evidence, with the view of inducing the

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court to give readier credit to his testimony, it has been held that this species of false evidence being of some consequence to the matter at issue, is perjury; but in this case the prisoners were not even cited as witnesses by any party. They were summoned by the principal sudder ameen and examined as to the degree of relationship which subsisted between one Shonah Gazi and Abir Mahomed, and they deposed to Abir Mahomed's mother being Shonah Gazi's father's sister. They may have believed that the relationship existed, and if they have deposed falsely, there is nothing to show that they did so with a malicious and fraudulent intention, which is the essence of the crime. But there is no positive proof that they swore falsely. The witnesses for the prosecution deny the existence of the alleged relationship in only a general way, and it is not even shown by the local inquiries, who was Shonah Gazi's father's sister, and whether she was Abir Mahomed's mother. For the above reasons, I acquit the prisoners and direct their immediate release.

"The sessions judge remarks that unnecessary local inquiries are too common in this district. They were certainly very unnecessary and vexatious in this case, and the sessions judge will call the magistrate's attention to the Circular Order, No. 331, of October 3rd 1827, which limits the interference of the police officers in the Mofussil to cases in which it may be necessary for the protection of the public interests."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

GOLUCK CHUNG MUNDUL (No. 20), OCKOOR CHUNG MUNDUL, SON OF GOUR MOHUN MUNDUL (No. 21), BISHONATH CHUNG MUNDUL (No. 22), GOVIND CHUNG MUNDUL (No. 23), OCKOOR CHUNG MUNDUL, SON OF BAOOL MUNDUL (No. 24), RAMDHUN CHUNG MUNDUL (No. 25), ISHUR CHUNG MUNDUL (No. 26), BHUGOBAN CHUNG MUNDUL (No. 27), BAOOL PERAMANICK (No. 28, APPELLANT), SHUMBHOONATH CHUNG (No. 29, APPELLANT), BHUGOBAN CHUNG (No. 30, APPELLANT), SHADOO CHUNG (No. 31, APPELLANT), PETUMBER CHUNG (No. 32, APPELLANT) AND RAMDHUN CHUNG (No. 33, APPELLANT).

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Case of BAOOL PERAMANICK and others.

CRIME CHARGED.—Affray attended with the homicide of Chintaram Mundul, and the woundi[illegible] of Ramdhun and Ockoor.

CRIME ESTABLISHED.—Affray attended with the homicide of Chintaram Mundul and the wounding of Ramdhun and Ockoor.

Committing Officer, Mr. F. Beaufort, magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 21st January 1852.

In an affray with culpable homicide, two parties of accused persons having been punished alike by the sessions court, one party appealed, asserting that they were attacked and not liable to the same punishment as their opponents. This fact not being in evidence, the appeal rejected.

Remarks by the sessions judge.—"The evidence for the prosecution shows, that in consequence of the sister of Baool (prisoner No. 28) and Bhugoban having misbehaved, Fuqeer Chand and his son Goluck and others would not eat with them; this led to abusive language. Baool was overheard by Goluck and Ockoor: an unpremeditated affray ensued, between prisoners Nos. 20 to 27 on the one side, and Nos. 28 to 33, with the deceased Chintaram, on the other, in the course of which the said Chintaram received various blows, from the effects of one of which, over the head, he died the following day; as is proved by the testimony of Godai, of Futtick (brother) and Titoomonee (widow of the deceased), and the assistant surgeon, who examined the corpse, testifies that death was caused by the said blow. Prisoners Nos. 20 to 25 confessed before the police and before

the joint magistrate, but deny here. The witnesses for the defence do not disprove the facts. The verdict of the law officer convicts all the prisoners of the charge in the calendar. In this I concur, and I sentence the prisoners each to four (4) years' imprisonment without irons, and to pay a fine of rupees fifty (50) by the 30th instant in lieu of labor."

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Case of BAOOL PERA MANICK and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoners Nos. 28 to 33 inclusive appeal to this court, urging that the other party, *viz.*, prisoners Nos. 20 to 27 attacked the house of prisoner No. 28, plundered it and killed Chintaram, who interfered to stay their excesses, and that the crime was not an affray in which both sides ought to be punished alike.

"Neither the witnesses for the prosecution nor those for the defence describe the affair as one of the character which the appellants assert it to have been. The appeal is rejected."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

MUNNAH SINGH (No. 1), SHEIKH EDOO (No. 6), SONAOOLLAH (No. 9), BIPRODOSS GHOSE (No. 13), BINDA KAHUR (No. 14) AND CHEEROO LUSHKER (No. 15).

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The imposition of hand-cuffs on refractory prisoners as a precaution, is no bar to a sentence on a formal trial, for the offence which led to their being put on.

A ring-leader in a jail riot, already undergoing a sentence of sixteen years' imprisonment, sentenced to transportation for life.

CRIME CHARGED.—1st count, aggravated riot and assault, in having, while prisoners under confinement in the Allipore jail, assaulted and wounded Shahibdeen, Modhoo Singh and other convicts; 2nd count, accomplices in the above.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 26th March 1852.

Remarks by the additional sessions judge.—"When the prisoners were brought before me, I observed, that they not only had irons on their legs but each man had on iron hand-cuffs, and I learnt that these had been put on not later than two or three days after the riot took place, owing to the riot, and by the magistrate's order.

"By Regulation XIV. of 1816, Sections V. and VI., a magistrate is allowed to impose light neck-chains on prisoners when they have committed a riot or other offence of a refractory or turbulent nature *as a punishment*, and in aggravated cases he is allowed to restrain them by hand-cuffs, when it is necessary for their own safe-guard, and to prevent their doing mischief to others. It is a matter for consideration whether the law looks on this imposition of hand-cuffs, which are never to be used without necessity, *as a punishment.* The law is so worded that there is room for two opinions, but I think that hand-cuffs cannot be imposed for offences which are described in the third, fourth and fifth clauses of Section V., except as a punishment, and if so, they are expressly sanctioned as a punishment for aggravated cases of riot, the crime with which these prisoners have been charged, and the punishment has been awarded in a summary manner as the law directs, by an authority who is allowed to pass such summary orders, and if my court were to award a fresh punishment on a more regular trial, it would be cumulative and illegal. I proceeded with the trial and passed sentence on the prisoners, but owing to the doubt of the legality of the proceedings, I have not yet issued any warrants in the case, and shall not do so until I hear from your court in reply to this letter.

"The prisoners in ward No. 6, of the Allipore jail, had a riot among themselves on the 13th of February 1852. They appear to have been discontented at having a reduced daily allowance for their food, and they vented their anger on some of the convicts whose duty it was to give the others their work, but who had no extra allowance of food or other indulgence for performing this duty. Some of the prisoners who were attacked ran out of the ward, but they were not followed by the rioters, although the latter might, by the rules of the jail, have gone outside, had they not at the time had work to perform inside, and when the authorities arrived on the spot all fighting had ceased. There was a great disturbance among the convicts, but there are no witnesses against any of the prisoners except other convicts. Each of those that has been convicted was said, by two or more witnesses, to have been engaged in the riot.

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"I have sentenced the prisoners who were convicted by myself and the law officer, (except No. 1.) to three (3) years' additional imprisonment, but I propose that Munnah Singh, who was the ring-leader and most violent in the riot, be transported for life. He was sentenced by me, on the 5th of March 1849, to sixteen (16) years' imprisonment, with labor and irons, for dacoity. He was a sepoy in a regiment of the line and is a daring and violent charecter, and an example should be made of him to others. Annexed* is a list of the crimes for which the prisoners have been sentenced to imprisonment."

* *Memo. of the Prisoners committed to the Sessions Court in Calendar No. 5, of February last, dated the 24th March 1852.*

1.	2.	3.	4.	5.	6.			
NAMES OF PRISONERS.	Crime.	Date of Sentence.	Period of imprisonment.	When the sentence expires.	UNEXPIRED PORTION OF THE SENTENCE.			REMARKS.
					Years.	Months.	Days.	
1 Munnah Singh, son of Gunga Singh.	Dacoity with wounding, &c.	5th March 1840.	16 Years.	5th March 1865.	12	11	11	
6 Sheikh Edoo, son of Sobhanee.	Theft.	29th June 1850.	2 ditto.	29th June 1852.	0	3	5	
9 Sonaoollah, son of Jameer Sheikh	Theft, &c.	15th Augt. 1851.	3 ditto.	15th Augt. 1854.	2	4	22	
13 Biprodoss Ghose, son of Ramjye Ghose.	Theft.	17th Octr. 1850.	3 ditto.	17th Octr. 1853.	1	6	23	
14 Binda Kahur.	Culpable Homicide.	5th May 1848.	7 ditto.	5th May 1855.	3	1	11	
15 Cheeroo Lushker, son of Manick Lushker.	Affray with homicide.	25th Sept. 1851.	10 ditto.	25th Sept. 1861.	9	6	1	

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Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" The sessions judge has suggested a difficulty with respect to any punishment being awarded by his court in consequence of the prisoners having been hand-cuffed. The superintendent of the Allipore jail, in his letter, No. 346,* explains that hand-cuffs were put on as a necessary measure of precaution, and not as a punishment. Sanction for the course he adopted is contained in paras. 11 and 27 of Section IX. of the General Rules for Management of Jails, and the imposition of hand-cuffs under the circumstances explained, is no bar to a sentence by a competent court on a formal trial.

" In concurrence with the recommendation of the sessions judge, Munnah Singh, the ring-leader in this riot, who is clearly undergoing a sentence of sixteen (16) years' imprisonment for dacoity, is sentenced to imprisonment in transportation for life.

" The additional sessions judge will issue his own warrant for his sentences against the other prisoners, there appearing no reason to interfere with them."

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* *From the Magistrate of 24-Pergunnahs, to the Additional Sessions Judge of 24-Pergunnahs, No. 346.*

" When I received your letter yesterday, I supposed that your query had reference to any orders which I might have given for the security of the prisoners while in attendance on your court, and as I had given no particular directions on the subject, I answered accordingly. I forgot at the time that the prisoners now before you, had been hand-cuffed by my verbal order, either at the time of the disturbance or a day or two afterwards. You are entirely mistaken, however, in supposing that they were hand-cuffed as a punishment; they were secured in this manner simply as a precaution against further violence on their part, a precaution, I may observe, which is frequently taken in the case of desperate characters under trial, whether convicts or not.

" There is no analogy whatever between this case and that which you quote, where stripes were inflicted as a punishment by the magistrate before the case was committed, It has never been held that to take measures of precaution against escape or violence, such as putting a man in heavy irons, in hand-cuffs, or confining him in a solitary cell, is tantamount to punishment for the offence of which a prisoner may be accused, and may be pleaded as a bar to his trial. Such measures have no reference to the offence with which the prisoner is charged. They are adopted simply to guard against the possibility of his committing other crimes or escaping the punishment due to the crime he is charged with. In this particular case, these prisoners had committed a most daring act of violence on the head men of their ward, and would, I am quite certain, have attacked the guard and myself in a similar manner, had I not, warned by the occurrences of January last, waited for a military force before proceeding to apprehend them. To have left these men the free use of their hands while they were awaiting their trial, would have been to risk the lives of my subordinates, and I most certainly should have incurred just censure, had such a want of precaution on my part led to loss of life, or to any further disturbance. I beg to repeat distinctly that the men now on trial before you have not been hand-cuffed as a punishment for the offence for which you are now trying them, but solely as a precautionary measure, in order to prevent them from being guilty of any further offence of the same nature."

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

GOVERNMENT

versus

PRANNAUTH SURMAH PODDAR.

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Case of PRANNAUTH SURMAH PODDAR.

Conviction and sentence for uttering a forged document, affirmed by the Nizamut Adawlut in appeal.

CRIME CHARGED.—1st count, having forged and caused to be prepared a forged *fysala* of the Jessore collectorate, in a suit under Regulation VII. of 1799, purporting to bear the signature and seal of the collector of that district; 2nd count, having caused the issue of the said alleged *fysala* in the principal sudder ameen's court at Furreedpore, knowing it to be forged.

CRIME ESTABLISHED.—Causing the issue of a forged *fysala*, knowing the same to be forged.

Committing Officer, Mr. C. Mackay, principal sudder ameen of Furreedpore, exercising the powers of a magistrate.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 6th January 1852.

Remarks by the sessions judge.—"This case was originated by the principal sudder ameen of Furreedpore, Mahomed Nazim Khan. The particulars are as follows:

"Greesh Chunder Rae and others, obtained a decree in the moonsiff's court against the prisoner for a bond debt of rupees 100, with interest. Against this decision the prisoner appealed to the principal sudder ameen at Furreedpore, and with other objections in his appeal he stated that he could not have executed the bond, and on the day it was said to have been executed, he was at the collector's office *at Jessore*, looking after a summary suit, and that he would produce a copy of the collector's decision in his favor of *that date*. In due course the prisoner caused to be filed, through his vakeel in the principal sudder ameen's court, the alleged copy of the summary suit *fysala* (attached to the calendar of commitment) No. 375, appertaining to the Wukf Mehal for certain rent for 1253 B. S., and purporting to bear the signature and seal of the collector of Jessore, Mr. C. D. Russell, and the signature also of the mohafiz, Kaleenath Doss, of the Wukf Mehal. The principal sudder ameen, finding that the prisoner's plaint in his court did not correspond with his answer before the moonsiff, suspected the genuineness of the *fysala* and sent it to the collector, Mr. Russell, for his inspection, and requested him to send the original *fysala*. Mr. Russell, in reply, informed the principal sudder ameen, that there was no such *fysala*, that the number of summary suits appertaining to the Wukf Mehal for 1253 B. S., amounted only to 301; that the signature, said to be his and affixed to the alleged copy of the *fysala*, is a

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forgery, and that the said copy was not written by any of the *omlah*. On the receipt of this reply, the principal sudder ameen sent the case to the joint magistrate, who made it over for investigation to Mr. Mackay, principal sudder ameen exercising the powers of a magistrate, who committed it to the sessions. The case was postponed from the last sessions by the judge, Mr. C. T. Davidson, who required the evidence of certain *omlah* of the Jessore collectorate, together with the register of summary suits for 1253 B. S., and book of receipts and copies of documents, *fysala*, &c., granted from the collectorate. The evidence entered in the calendar by the magistrate proved that the prisoner caused the alleged *fysala* to be filed in the court of the principal sudder ameen at Furreedpore, and that it is the same that was there filed. The evidence of the *omlah** of the collectorate required by the court prove as follows:

"The mohafiz deposed that the register of summary suits and receipt book, produced by him, are genuine; that no *summary suit at the instance of the prisoner*, nor to the number of 375 for 1253 B. S., was instituted, the aggregate number for that year being 301; that the signature, said to be his and attached to the alleged *fysala*, is a forgery; that the alleged *fysala* was not written by any one in the office of the Wukf Mehal; that the collector, Mr. Russell, in his presence declared that the signature, said to be his (Mr. Russell's) and attached to the alleged *fysala*, is a forgery. The mohurir deposed to the genuineness of the register of summary suits produced by the mohafiz (the preceding witness); and that Mr. Russell, in his presence declared that the signature, said to be his (Mr. Russell's) and attached to the alleged *fysala*, is a forgery.

"The nazir deposed to the genuineness of the register of summary suits.

"The register and receipt book, alluded to in the above depositions, have been entered by me as documentary evidence in the calendar. I examined both. Of the genuineness of the former, there cannot be the slightest doubt, bearing, as it does, Mr. Russell's signature in different parts, and of the latter there is no reason whatever to question its originality. The prisoner before the principal sudder ameen in his capacity as magistrate admitted that he caused the alleged *fysala* to be filed on his behalf. In his defence too in this court, he made a similar admission, but added that the plaintiffs in the civil action obtained against him in the moonsiff's court, had conspired to ruin him, and had caused the destruction of the original *fysala*. This plea is

* These men, three in number, are *omlah* of the Wukf Mehal, to which property the alleged *fysala* is said to appertain.

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unsupported by a tittle of evidence, and is, in my opinion, imaginary, as the summary *suit register*, independent of the evidence of the record-keeper, and of the mohurir, clearly shows that no *summary suit at the* prisoner's *instance* or up to the number of 375 for 1253 B. S. was ever instituted; the number *for that year* being limited to 301. The *futwa* of the law officer convicted the prisoner on the 2nd count, in which verdict I concurred, and sentenced him to three (3) years' imprisonment with hard labor."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on the prisoner *Prannauth Surmah.*"

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

NUBKISSORE SINGH

versus

FUTTOO CHOWDRY (No. 3), BROJOKISSORE DHUR (No. 4), SADUCK MANJEE (No. 5) AND WOOJEER MANJEE (No. 6).

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The court, in concurrence with the sessions judge, held that the offence charged against the prisoners amounted to theft and not to embezzlement, and affirmed the sentence which the sessions judge proposed to pass on them.

CRIME CHARGED.—Nos. 3, 4 and 6, having stolen salt, valued at Company's rupees 432-8-0, belonging to the master of the prosecutor and No. 5, accomplice in the above crime.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 20th March 1852.

Remarks by the sessions judge.—"The prisoners pleaded 'not guilty.'

"The evidence in this case exhibits a very deep-laid scheme. The voluntary confession of Saduck Manjee is minute and clear, and from his confession, and the oral and documentary evidence confirming it, there is no doubt of the guilt of the prisoners.

"The facts of the case as elicited in evidence are as follows:

"Two boats laden with salt left Kutwa on the 6th Poos last, for Rugonathgunge on the Bhagirutty; in one was packed 117 maunds, 32½ seers, and in the other 73 maunds, 1 seer, 4 chittacks of salt. The prosecutor, Nubkissore Singh, was the *churundar* on the part of Prankishen Baboo, the owner of the salt. On the evening of the 9th Poos, the boats anchored at Satooie, where the manjee of the smaller boat, Byragee Manjee, went home, and the manjee of the larger one, prisoner No. 6, notwithstanding the prosecutor's express injunctions to the contrary, went on at night. The prosecutor who on quitting

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Kutwa sometimes occupied the small and sometimes the large boat was then in the small boat. The next day he left the small boat and went on by land and found the large boat anchored below Berhampore. One of the boatmen, Turab Alee, quitted the boat there. The other boatmen, after consulting together, took the prosecutor up in the boat and continued rowing until they reached Kateegunga. They there compelled him to leave the boat and proceed to Rugonathgunge, for the purpose, as they represented, of procuring an order for the immediate clearance of the salt, as the boat could not go further on account of shallow water. The prosecutor left them, accompanied by Moonsee, one of the boatmen, having ordered the prisoner No. 6, to lie at anchor below Kurbala. He informed the *mahajun* at Rugonathgunge of the cause of his leaving the boat. The *mahajun's* gomashta gave him rupees 3, and ordered one Ramessur to return with him, and gave Moonsee 6 annas to hire another boatman. Moonsee, under pretext of procuring another, left him and decamped. On returning with Ramessur to the spot where the boat lay anchored, he was surprized not to find it. He went on to Zeeagunge looking for it and making inquiries, and from some boatmen in a boat passing up the river, he learnt that a salt boat was lying burnt at the entrance of Kateegunga. He went there, and found the boat as described with the salt removed from it, and gave information to the thanna.

"The salt was to have been conveyed to Rugonathgunge. Rugonathgunge is opposite to Jungypore. The prisoners Nos. 3 and 4, resided at Jungypore. About the 9th Poos, but the date is not clearly established, they ordered prisoner No. 5, to bring them some 'boatmen after fixing their hire.' He brought three, Dookrun Khan, Punchoo Sheikh and Keyroo Sheikh. A boat was hired from Jubboo, Ghat manjee, prisoner No. 5, acted as manjee, and the above three as dandees, and they started after obtaining a pass from the Toll Ghaut in the name of prisoner No. 5. On reaching Gadee on the river, they were joined by prisoners Nos. 3 and 4, who proceeded with them to Zeeagunge, where they bought some mats, and the same evening reached Kurbula. Here the prisoners Nos. 3 and 4, told them their boat had arrived, and they must take the salt out of it. This other boat was the boat laden with salt which the prosecutor had left, and of which the prisoner No. 6 was the manjee. The two boats were brought alongside of each other by the orders of prisoners Nos. 3 and 4, and the salt was removed from the one boat to the other, and then the boat from which it was taken, and of which prisoner No. 6 was manjee, was burnt by prisoner No. 6, under the orders of prisoner No. 3. Punchoo Sheikh, one of the three hired

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boatmen, seeing the other boat burning, was frightened and ran away. The prisoners Nos. 3 4 and 5, with the other two boatmen, then proceeded in their boat with the salt to Kagra, and thence down the Bhagirutty into the Jellinghee river to Gwarree, where the prisoner No. 4 got a pass at the Toll Ghaut in the name of Mohanund Chowdhree as mahajun, and in the name of prisoner No. 5 as manjee. The pass was taken for *Oojunchar*. They then made their way to the mouth of the Jellinghee, and the prisoner No. 3, seeing a burkundauz whom he recognized, was afraid of discovery, and ordered prisoner No. 5 to take the boat to a concealed spot near a *chur*. On reaching it prisoners Nos. 3 and 4, went to Gujgujiahparah and brought some men in a *dinghee* into which the salt was removed, and sent off down the Ganges.

"The confession of prisoner No. 5 was given voluntarily both at the thanna and before the magistrate; and from the manner in which he has entered into all the particulars, I believe the whole to have been correctly stated. In order to test its accuracy, when the proceedings of the trial were closed, and before the *futwa* was taken from the law officer, I addressed the toll collectors of Jungypore and Kishnagur regarding the toll papers which the prisoner had stated had been obtained from those tolls. The statement was confirmed by their official replies. They had been granted, as stated by him, in the name of Mohanund as mahajun, and of himself as manjee, and the dates when they were granted, corresponded with the probable dates when, according to his own showing, they passed Jungypore and Gwarree respectively.

"The particulars of the confession were confirmed by the evidence of Rubee Sheikh, a boatman in the boat which was burnt, as well as the three boatmen in the other boat, and Jubboo Sheikh, the ghat manjee at Jungypore.

"Panchoo Sheikh, the boatman who ran away, informed Himmut Sircar, a shopman at Ballygutta, that the prisoners Nos. 3 and 4, had taken salt out of a boat which they afterwards burnt, and Himmut Sircar informed Nundgopaul, who gave information at the thanna. Himmut Sircar caused the attendance of Panchoo at the thanna.

"There were some slight and immaterial differences in the statements of the witnesses. The evidence for the defence proved nothing in favor of the prisoners.

"The confessions were proved by the attesting witnesses. The guilt of the prisoners was clearly established. It was an aggravated case of theft, as it was accompanied with the burning of a boat; but the owner of it had not lodged a complaint, and this part of the crime was not included in the charge.

"The law officer convicted the prisoner No. 6 of the charge of embezzlement, and the other prisoners Nos. 3, 4 and 5 as accom-

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plices. As I cannot agree with the *futwa*, and as I consider the case to be one of theft under aggravating circumstance, and to be very probably one of many that takes place on the river to the loss of life as well as property, I would, for the sake of example, recommend that the prisoners Nos. 3, 4 and 6, be sentenced to nine (9) years' imprisonment with labor and irons, and the prisoner No. 5. to the same period as an accomplice.

"The darogah's neglect in this case in delaying to send in the prisoner No. 5, with other points, was brought to the notice of the magistrate."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I entirely concur with the sessions judge in convicting the prisoners Nos. 3, 4 and 6 of theft; and the prisoner No. 5, was only the manjee of the boat from which the salt was stolen. He aided and abetted in the commission of the offence, but he had not *any charge* of the salt; the legal possession of the salt remained with the owner, the plaintiff, his servant being merely entrusted with the care of it, while under conveyance to another place. The prisoner, therefore, cannot be held guilty of embezzlement. The credibility of the direct evidence is convincingly supported by the confessions of the prisoner No. 5, the truth of which he admitted on the trial, and by the collateral facts of the case; the defence of the prisoners Nos. 3, 4 and 6, that the witnesses were corrupted to give false evidence against them, rests upon no substantial grounds. It does not even appear that the prisoners Nos. 3, 4 and 6 were known to the prosecutor. The offence is of an aggravated character, and I confirm the sentence of nine (9) years' imprisonment with labor and in irons, which the sessions judge recommends, for the sake of example, should be passed on the prisoners."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

JEETOO PAUGLAH* (No. 1), RUHMON* (No. 2), MODHOO BAGDEE* (No. 3), BASOODEB LUSHKER (No. 4), KEFATOOLLAH (No. 5), SHEIKH SULLEEM (No. 6), MOTHOOR DOSS (No. 7), CHINTAMONEE (No. 8), BISSONATH JOOGY (No. 9), GOBIND CHASADHOPA (No. 10), HARRACHAND GAIN (No. 11), NIMCHAND (No. 12), BHUGWAN LUSHKER (No. 14), MOONSHEE (No. 15), HURREE BAGDEE (No. 16), KINNOO DOSS (No. 18), KOOBEER SHEIKH (No. 19), SHEIKH ANUND (No. 20), TARRACHAND BAGDEE (No. 21), NITTAR BAGDEE (No. 22), KALLACHAND DOSS (No. 23), SHEIKH HANIFF (No. 24), KALLEE MALLA (No. 25), HURREE GHOSE (No. 26), DIGGUMBER BAGDEE (No. 27), NAWOO SEIN (No. 28), DOORGACHURN PAUL (No. 29), MODHOO COWRAH (No. 30), JYE BAGDEE (No. 31), RUMJOR SHEIKH (No. 32) AND YAR ALLY (No. 33).

1852.

April 21.

Case of JEETOO PAUGLAH and others.

A number of prisoners convicted of riot in a jail, admitting the occurrence of the riot, plead that others committed it, and that they remained quiet. No explanation of the implied error being even attempted on their part, their appeal dismissed.

CRIME CHARGED.—1st count, Nos. 1 to 3, wounding, with intent to murder Roop Roy, khuleeburdar and Kallachand, convicts; 2nd count, while being prisoners under confinement in the Allipore jail, riotously assaulting and wounding Roop Roy and others; and 3rd count, all the prisoners, accomplices in the above crime.

CRIME ESTABISHED.—Nos. 1 to 12, 14 to 16 and 18 to 29, riotous assault and wounding, and Nos. 2 to 12, 14 to 16, 18 to 28 and 30 to 33, accomplices in a riotous assault and wounding.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 24th February 1852.

Remarks by the sessions judge.—"The Government was prosecutor in this case. The prisoners, who are sentenced to different periods of imprisonment in the Allipore jail, denied the charges on which they were arraigned. Witness No. 1, Roop Roy, khuleeburdar, or superintendent, who is also a convict in the jail, deposed, that on the 4th February last, about 1 P. M., all the prisoners attacked him, and beat him on the head, back,

* These have not appealed.

1852. April 21. Case of JEETOO PAUGLAH and others.

hands and feet, until he fell down and became insensible. Prisoners No. 1, Jeetoo Pauglah, No. 5, Kefatoollah, No. 6, Sulleem, No. 3, Modhoo Bagdee, No. 30, Modhoo Cowrah, being mentioned as having *lattees* in their hands, and prisoners No. 31, Jye Bagdee and No. 10, Gobind Chasadhopa, seizing him by his cloth and declaring him to have been the cause of the prisoners having rations of the value of 3½ pice. This witness was not able to point out in particular who struck him, but suspected Doorgachurn Paul, No. 29, Nawoo Sein, No. 28 and Jeetoo, No. 1. It appears that the witness, for his good conduct, was appointed as a superintendent over the other prisoners, and had been useful to the jailor in introducing the messing system in the jail, and had consequently incurred the dislike of the prisoners, who combined together to punish him in the way described. The statement of the witness was coroborated by the evidence of the other witnesses. All the prisoners being proved to have been concerned in the riot—Jeetoo, No. 1 and Doorgachurn, No. 29, Modhoo Bagdee, No. 3 and Ruhmon, No. 2, being more conspicuous in their riotous conduct. From the evidence of Dr. Strong, it appeared that Roop Roy, witness No. 1, 'had a considerable lacerated wound on the top of the head, 'and Kallachand, witness No. 2, a slight bruise on the right 'shoulder blade', neither of these wounds were considered of a dangerous character. All the prisoners pleaded their innocence, some complaining against Roop Roy for his oppressive conduct, others citing witnesses to prove they were sitting at their work at the time of the riot. Some of the witnesses, who were fellow-prisoners, supported them in their statement to this effect. The jury did not consider the first count proved. They considered the second count proved against Jeetoo, No. 1, Ruhmon, No. 2, Sulleem, No. 6 and Doorgachurn, No. 29, and the 3rd count against all the prisoners. I concurred with the jury in the first count not being proved. I considered the second count' proved against Jeetoo, No. 1 and Doorgachurn, No. 29 ; and the third count against all the prisoners, Modhoo Bagdee, No. 3 and Ruhmon, No. 2, being more actively concerned, and sentenced them to different grades of punishment."

Sentence passed by the lower court.—Nos. 1, 2, 3 and 29, each seven (7) years' imprisonment, and Nos. 4 to 12, 14 to 16, 18 to 28 and 30 to 33, each five (5) years' imprisonment with labor and irons in addition to their former sentence.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—" Twenty-seven out of the thirty-one prisoners convicted in this riot, have appealed, in six scarcely legible petitions.

" The petitions are all to the same general purport, admitting that a riot took place, and asserting that they, the appellants, remained quietly at their work, while other persons were engaged

in the riot. In fact, we are solicited to believe that the witnesses have charged the wrong persons (almost without an exception) with the offence. No attempt whatever is made to explain how such a mistake occurred, if mistake it was, or why the real offenders should have been screened by the sufferers and officers of the jail, if it was the result of premeditation.

"The appeals are not worthy of consideration and are rejected."

1852.
April 21.
Case of JEETOO PAUGLAH and others.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

SISTYDHUR MUNDUL

versus

SHAFULRAM LUSHKUR.

1852.
April 22.
Case of SHAFULRAM LUSKKR.

Prisoner convicted of culpable homicide in a momentary fit of passion, but by a blow from a heavy mallet, sentenced to seven years' imprisonment, with labor in irons.

CRIME CHARGED.—Murder of prosecutor's father, Okoor Mundul.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 3rd April 1852.

Remarks by the additional sessions judge.—"The prisoner lives at Takdaree, and the deceased man, Okoor Mundul, his father-in-law, lived at Kishunpore, more than a mile off. On the 26th of February last, Okoor went to the house of his son-in-law to see him, and to inquire why he did not visit his wife, who was living with her father, and to fetch a bed from his house. According to the deposition of the prisoner, made before the police and the magistrate, a dispute arose between the two men; the prisoner was irritated at his understanding that his wife was too intimate with another man, with her father's knowledge. He was at work in the verandah of his house with a wooden mallet, and with it he hit a blow at Okoor, which happened to fall on his head and knocked him down. The prisoner and his sister together endeavoured to restore Okoor with water, but they were unable to do so. Two witnesses, Nos. 1 and 8, heard the dispute, and No. 1 states, that the prisoner did what he could to restore his father-in-law to his senses. The crime having taken place at the prisoner's house, where Okoor had not been invited to go, and the prisoner having done what he could to remedy the evil, show that there was no premeditation to commit the crime, but the mallet weighs nearly two and a half seers, and is, with the handle, one foot and ten inches long, so that it may be considered a deadly

1852. April 22. Case of SHAFULRAM LUSKER.

weapon. I think that fourteen (14) years' imprisonment with labor, would be a sufficient punishment for the crime, which, owing to the great weight of the mallet, I consider to be aggravated culpable homicide."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" There is no direct evidence with regard to the manner in which this murder was committed, nor what led to it, except the confession of the prisoner. From this it would appear, that the prisoner was beating his floor with a *peetny*, when his father-in-law (deceased) came in; that they had words, and that prisoner hit him one blow with the *peetny*, which killed him.

" This account is corroborated by a witness, who saw the prisoner beating his floor, and two, who heard the altercation. There is nothing to induce a belief that there was any premeditation or intention to kill, on the part of the prisoner, and his behaviour after the fatal blow shows that he was only actuated by a momentary fit of passion.

" I concur in convicting the prisoner of culpable homicide, and consider that seven (7) years' imprisonment, with labor and irons, is an adequate punishment. Orders will issue accordingly."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

RAJARAM MUNDUL.

1852.

April 22.

Case of RAJARAM MUNDUL.

A prisoner charging persons with dacoity on solemn affirmation, and subsequently deposing that the charge was false, convicted of perjury, and the recommendation of the sessions judge to reduce the sentence below three years' imprisonment rejected.

CRIME CHARGED.—1st, perjury, in having, on the 23rd January 1852, deposed under the solemn declaration required by Act V. of 1840, before the mohurir of Thanna Ramnagore, that Bhugwan Safooye, Juggessur Mundul and others, had committed a dacoity in his house; and again in having, on the 28th January 1852, deposed under a similar solemn declaration, before the magistrate of the 24-Pergunnahs, that the dacoity above alluded to did not take place, one or other such statements being false; and the two statements being contradictory of each other, on a point material to the issue of the case; 2nd, perjury, in having, on the 23rd January 1852, deposed under the solemn declaration required by Act V. of 1840, before the mohurir of Thanna Ramnagore, that Bhugwan Safooye, Juggessur Mundul and others, had committed a dacoity in his house, such deposition being false, on a point material to the issue of the case.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge, on the 2nd April 1852.

Remarks by the additional sessions judge.—"The prisoner pleaded 'guilty' to the first charge, but 'not guilty' to the second. The first charge was also proved on the trial. The second charge was founded only on a confession before the magistrate; if, however, a man makes two contradictory statements on oath, and then without oath states that the first is the false one, that statement cannot be received as a trustworthy confession that the first is false; especially, as in this case, he afterwards pleads on trial that it is the true one. I, therefore, in concurrence with the *futwa*, acquitted the prisoner on the second charge. The defence of the prisoner in extenuation of his crime, is, that there was a dacoity, and that he was induced, by the representations of the police, to withdraw the charge which he had made. There was no evidence on the trial respecting the dacoity, except for the defence, and there is much greater reason to suppose that there was a dacoity than that there was none. I have sentenced the prisoner to three (3) years' imprisonment, with labor, but I think that, in the absence of all proof of any false charge being made against any person, three (3) months' imprisonment would be a sufficient punishment

1852.

April 22.

Case of RAJARAM MUNDUL.

for the prisoner's crime, particularly if he really has had a dacoity committed in his house."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner deposed before the police, that his house had beeen robbed by dacoits, and that he recognized several persons, (whom he named,) at the time of the occurrence. On an inquiry by the thanna mohurir, the occurrence of a dacoity appeared doubtful, and the darogah was deputed to investigate, when the prisoner admitted that the charge of dacoity was false, and that the persons whom he accused, had entered into a conspiracy to implicate him in an offence against the salt laws, and that his motive for accusing them was to turn the tables against them. He deposed to this effect to the magistrate; but in the sessions court has reiterated his charge of dacoity.

"The giving of contradictory statements on solemn affirmation, is clearly established. In my opinion, the first was most likely to have been false; but even supposing that to have been true and the last deposition false, the prisoner has been guilty of a serious offence against the administration of justice and police; and the sentence which has been awarded is by no means too severe. The recommendation for a reduction of the period of imprisonment to three (3) months', cannot be complied with."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

UKIL MUNDUL.

1852.

April 23.

Case of UKIL MUNDUL.

A prisoner convicted of perjury, in having personated another, and falsely deposed that he was that other person, a material witness in a case of rape, sentenced to three years' imprisonment by the sessions judge. Recommendation for mitigation rejected.

CRIME CHARGED.—Perjury, in having, on the 2nd July 1851, under a solemn declaration taken instead of an oath, before Mr. C. W. Mackillop, assistant, exercising the powers of joint magistrate in the 24-Pergunnahs, deposed, in a case of rape, in which Annundo Bewa was the prosecutor, that his name was Padar Mundul, and feigning himself to be that person, had his deposition taken, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer, Mr. C. W. Mackillop, assistant, exercising the powers of joint magistrate, zillah 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge, on the 23rd March 1852.

Remarks by the additional sessions judge.—"There were several witnesses summoned and sent to the magistrate's court, in the case of rape mentioned in the charge, one of whom was Padar Mundul. They went back without giving their evidence on the supposition that the case would be compromised, and the prisoner then went before the assistant magistrate, and, under the name of Padar Mundul, stated that he knew nothing about the case of which he was a witness for the prosecution. His defence is, that he is sometimes called Padar Mundul, and some witnesses state, that he has that name as well as that of Ukil Mundul, but I do not believe them; *first*, because the prisoner was not sent in with the other witnesses; *secondly*, because different witnesses, living in his village, state that although they have known him for years he was never called Padar; *thirdly*, because, as appears on the record, he could not be apprehended until the 10th November, more than four months after his crime was brought to the notice of the police authorities; and *fourthly*, because he confessed his crime before the assistant magistrate, and said that he did change his name. I have sentenced him to three (3) years' imprisonment with labor, but as in most of the cases of this kind, which have been tried by the Nizamut Adawlut, a mitigated sentence has been passed, and as the prosecutor was present when the false deposition was made, in which Ukil said he knew nothing about the case, I consider it my duty to propose that he be sentenced by the higher court to one (1) year's imprisonment with labor."

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Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The circumstances of the case are stated in the judge's letter. It is clearly proved that the prisoner is Ukil Mundul and not Padar Mundul, and that he nevertheless, on solemn affirmation, deposed that he was Padar Mundul, and that he knew nothing of the case of rape in which he was examined. The object was to deceive the court, and to obtain an acquittal of the accused against whom the real Padar Mundul had given information at the thanna. The fact of whether or not the person examined was or was not Padar Mundul, was therefore a point material to the case.

"The prisoner is clearly guilty of the crime charged, and there is nothing in his favor to justify a mitigation of his punishment.

"It is not desirable that such deliberate and gross perjury should be treated lightly."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT

versus

DHURMA.

1852. April 23. Case of DHURMA.

Nine years' imprisonment held too severe a punishment for stealing rupees fourteen (14) by picking a lock, when a soldier on guard over the same.

CRIME CHARGED.—1st count, theft of rupees 17-8-0, by picking the lock of the *malkhana* of the magistrate's court, which was in his charge; 2nd count, having in his possession stolen rupees, knowing at the time the same to have been obtained by theft.

CRIME ESTABLISHED.—Theft of rupees 17-8-0, by picking the lock of the *malkhana* of the magistrate's court which was in his charge.

Committing Officer, Mr. G. G. Balfour, magistrate of Monghyr, Bhaugulpore.

Tried before Mr. F. Lowth, officiating sessions judge of Bhaugulpore, on the 16th January 1852.

Remarks by the sessions judge.—"This case was tried with the aid of three hill-men, a jemadar and two sepoys belonging to the company of the regiment of Hill Rangers stationed at Monghyr.

"The prisoner, also a sepoy of the above regiment, pleaded 'guilty' to the charges preferred against him, but urged that he was under the influence of liquor at the time of committing the act.

"The prisoner appears to have been on guard at the *malkhana* of the magistrate's court, from 6 to 8 P. M., of the 30th Novem-

ber 1851, when he was relieved by Muhshadeba, witness No. 1. The lock of the door appearing to have been picked, the prisoner was questioned on the subject; but pleaded ignorance. The havildar on guard then put the prisoner under arrest and reported the matter to the soobadar, his superior officer, who brought the same to the notice of the magistrate. The prisoner then admitted his having picked the lock with his gunpick and taken rupees 14; twelve of which he produced from a place where he had concealed them, whilst the remaining two he said had been expended in the purchase of liquor.

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April 23.

Case of DHURMA.

"The confessions of the prisoner before the police and magistrate's court were read over and duly verified by the attesting witnesses.

"The jury returned a verdict of guilty against the prisoner, in which I concurred; and considering him to have been on duty at the time of the commission of the deed, and in charge of the property stolen, exemplary punishment was considered necessary."

Sentence passed by the lower court.—Seven (7) years' imprisonment and two (2) years' in lieu of corporal punishment, in all nine (9) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The prisoner Dhurma is convicted of robbing the *malkhana* of rupees 14, by picking the lock, when he was sentry on guard over the same; the crime is aggravated by the fact that he was a soldier on guard over the very property which he stole; but I think nine (9) years' imprisonment more than a sufficient punishment, and reduce the sentence to five (5) years' imprisonment with labor and irons."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

MUSST. BINDABUNNY

versus

GYARAM KAMRAEE, ALIAS GYAPERSAUD KAMRAEE (No. 10, APPELLANT), KASHEE KAMRAEE (No. 11, APPELLANT), JUGGURNATH GHOSE (No. 12, APPELLANT), NARAIN GHOSE (No. 13, APPELLANT), KALEE GHOSE (No. 14, APPELLANT), MUDHOO GHOSE No. 15, APPELLANT), KISTO MOHUN GHOSE (No. 16), BULLYE GHOSE (No. 17), DEBEE PAUL (No. 18), BUNGSHY DEY (No. 19) AND OODYE MYTEE* (No. 20).

1852.

April 24.

Case of GYARAM KAMRAEE, *alias* GYAPERSAUD KAMRAEE, and others.

The sentence passed by the sessions judge, on the prisoners (appellants) convicted of dacoity, affirmed, but it is considered inadequate to their offence.

CRIME CHARGED.—Nos. 10 to 19, 1st count, dacoity in the house of the prosecutrix, and plundering therefrom property to the value of Company's rupees 133-1-0; 2nd count, aiding and abetting, as accomplices in the above dacoity, Nos. 10 to 18; 3rd count, knowingly having in their possession plundered property acquired by that dacoity.

CRIME ESTABLISHED.—Dacoity in the house of the prosecutrix, and plundering therefrom property to the value of Company's rupees 133-1-0.

Committing Officer, Mr. V. H. Schalch, magistrate of zillah Midnapore.

Tried before Mr. W. Luke, sessions judge of zillah Midnapore, on the 11th February 1852.

Remarks by the sessions judge.—"The prisoners plead 'not guilty.' The prosecutrix deposes that a gang of thieves broke into her house, by scaling the wall and opening the front door, on the night of the 19th January, and carried off property to the value of Company's rupees 133-1-0. Her husband being too ill to make any exertion, she raised the alarm, when some neighbours came to her assistance, to whom she stated that she identified the prisoners Nos. 10, 11, 12, 13, 16, 17 and 19. She swears in this court to their identity, regarding whom she has no doubt, as they all reside in the immediate neighbourhood of her dwelling, and their persons have long been familiar to her, and that by the light proceeding from a torch made of hemp stalks she could distinguish clearly who they were. Her daughter, who was in the house at the same time, coroborates the prosecutrix's statement, as also other witnesses, who came to the spot immediately after the thieves had run off, and to whom both

* Acquitted by the sessions judge.

she and her daughter related what had occurred. The prisoners No. 12, Juggurnath Ghose, and No. 19, Bungshy Dey, confessd before the darogah in the Mofussil and implicated all the parties named by prosecutrix; they are so circumstantial and corroborative of the evidence for the prosecution, as to entitle her to credit, and there is nothing on the record that would lead to the suspicion that the confessions are not true and voluntary. The prisoners in this court in their defence all plead an *alibi*, and that the property found in their possession is their own, and they entirely fail to establish either one or the other, and the weakness of their defence strengthens the evidence for the prosecution. The village police, who first gave notice of the robbery at the thanna, represented it as a simple theft and did not mention any names of parties implicated, but their silence as to the real character of the crime was evidently collusive, as is proved by the result of the investigation, and their testimony does not, therefore, in my opinion, at all weaken the evidence as recorded in the trial. I deem all the prisoners in the calendar, except Oodye Mytee, guilty of the charges preferred against them, and sentence them, as their acts do not appear to have been of an aggravating nature, to five (5) years' imprisonment each, with labor in irons, and to pay a fine of Company's rupees 117-10-3, under the provisions of Act XVI. of 1850."

1852.

April 24.

Case of GYARAM KAMRAEE *alias* GYAPERSAUD KAMRAEE, and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners Nos. 10, 11, 12, 13, 14 and 15 have appealed. There is, I think, abundant evidence against the prisoners. The prosecutrix and her daughter swear to the recognition of the prisoners Nos. 10, 11, 12, 13, 17 and 19, at the robbery; and the witnesses, neighbours of prosecutrix, say, on the trial, that Taree named specifically the robbers she recognized after the dacoits had decamped. The confessions of the prisoners Juggernath and Bungshy Dey, which indicate the other prisoners as concerned in the dacoity, have been duly proved by the attesting witnesses, and the fact of articles taken at the robbery being found in the possession of the prisoners who have appealed, is satisfactorily established. The prisoners have set up *alibis*, and claimed the articles found in their houses as their own; but the *alibis* have completely failed, and the only witnesses who speak to the identification of the articles in question, are near relations of the prisoners. Some of these articles are well susceptible of identification, and have been satisfactorily recognized by the witnesses on the part of the prosecution. I see no reason to interfere with the sessions judge's conviction, and reject the appeal. The measure of punishment is, however, I think, altogether inadequate to the heinous crime of which the prisoners have been found guilty. I confirm the levying of a fine of rupees 117-10-3 from the prisoners, under Act. XVI. of 1850."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

JEEUN KULWAR

versus

NEWUR (No. 2), THAKOOR (No. 5), BHOUDO (No. 6), BHEENICK (No. 7), AGNOO (No. 9) AND AKLOO (No. 12).

1852.

April 24.

Case of NEWUR DOOSADH and others.

Appeal dismissed, conviction and sentences affirmed.

CRIME CHARGED.—Nos. 2, 5, 6, 7 and 9; 1st count, dacoity in which property valued at rupees 2,292-12-0 was plundered, attended with severely wounding Dookhee Gowalla and slightly wounding Radhi Gowalla, Ramhit Kulwar and Ram Churn Kulwar; 2nd count, knowingly receiving the plundered property; and 3rd count, privity; and No. 12, 1st count, dacoity; and 2nd count, privity in the above crime.

CRIME ESTABLISHED.—Prisoner No. 2, receiving plundered property knowing it to be such; Nos. 5 and 6, 1st, dacoity with severe wounding, and 2nd, knowingly receiving plundered property; Nos. 7 and 9, receiving plundered property knowing it to be such, and No. 12, dacoity with severe wounding.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 3rd of December 1851.

Remarks by the sessions judge.—"The following are the facts of this case:

"The prosecutor, who is a merchant, was roused from sleep at midnight of the 2nd August, by the voice of his brother Ramhit, (witness No. 3), calling out, '*dakha dak.*' On waking and perceiving a glare of torches in the house, he ran to call the chowkeedars, when the prisoner* No. 13, the wife of No. 2, meeting him, said, 'be still, or the robbers will murder you.' He then stood at the corner of the bazar, close to his house, and saw the gang, said to contain about forty men, with clubs and torches, but recognized no one.

"On returning to his house, after the robbers had decamped, he found that his trunks had been opened and his property carried off. Prisoner No. 2, (who is the chowkeedar of the village), shortly after came to the house and told the old man not to be troubled as he had recognized all the robbers, and his property should be restored. The conduct of this chowkeedar, prisoner No. 2, excited the suspicion of the prosecutor at the time, as he took no steps to apprehend the dacoits, or to alarm the

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* This prisoner did not appeal to the court.

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Case of NEWUR DOOSADH and others.

villagers. This same chowkeedar reported the outrage at the thanna the next morning, and the darogah arrived in the evening of the same day and took the depositions. Four individual witnesses, Nos. 1, 2, 3 and 4, were wounded by the robbers, No. 1 severely, Nos. 2, 3 and 4 slightly.

" Nos. 1 and 2 identified the same prisoners Nos. 5, 6 and 12, and three others, not arrested, before the darogah, but before the magistrate and the sessions court, they added the names of several others; on being cross-examined by the court, and the prisoners on this point, they attempted to explain the contradiction by saying, that as the last-named prisoners were either chowkeedars, or men of the village, they concluded they had come to give aid against the dacoits.

" This is unsatisfactory. If the witnesses recognized them at all, they must have seen that they were aiding and not opposing the robbers. I cannot, therefore, admit this evidence of identity against any of the prisoners except those mentioned in the first deposition before the darogah.

" The houses of all the prisoners were searched and sundry articles of property discovered.

" Prisoner No. 2 is the father of the village chowkeedar, but himself the working man, his son being a minor; his conduct on the night of the dacoity excited reasonable suspicions, and the next day he is said to have deposed before the darogah to having recognized six of the prisoners. This fact appears to me doubtful, at all events the day after the dacoity the prosecutor told the darogah that he suspected this prisoner No. 2 himself, his house was searched, and sundry articles, proved to be part of the plundered property, were discovered.

" This prisoner offers no evidence in his defence. The proof against him on the second count, is, I think, conclusive; of the property discovered in his house, several of the articles are silver ornaments and are satisfactorily identified. His defence on the point on which his guilt is established is that the property found in his house was put there, and that the prosecutor at first denied having any suspicion of him. Being a chowkeedar and an old offender, before convicted of theft, I sentenced him to fourteen (14) years' imprisonment with labor and irons in banishment.

" Prisoner No. 5. This prisoner is identified by both the witnesses, Nos. 1 and 2, who are wounded by the dacoits. He is also mentioned by prisoner No. 2 to the darogah. In his house also was found property Nos. 11 and 12; No. 11, being a valuable gold armlet and No. 12, a gold ring with cornelian, both remarkable articles, and clearly proved to belong to the prosecutor.

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"The evidence to the discovery is satisfactory, the search took place in presence of the prisoner; a club also left on the premises is sworn to by several witnesses as the property of this man.

"Prisoner No. 6. Against this prisoner is established the discovery of property

"No. 13,—a pair of white *chudders*.
" 14,—a piece of red *salloo*.
" 15,—a pair of *pyjamas*.
" 16,—a piece of American cloth.

"These are well susceptible of identification, and are quite unsuited to the prisoner's station in life.

"He was also mentioned by prisoner No. 2, in his evidence before the darogah, and the answer taken before the darogah, implicates him in privity. He was identified also by the two wounded witnesses. I observe that this man's house was searched in his absence though he had been arrested.

"The prisoner denies having made this demi-confession before the darogah and pleads an *alibi*, but the plea is not established.

"Prisoner No. 7. Property, Nos. 17 and 18, was discovered in this man's house. No. 17 is a silver armlet of peculiar pattern, No. 18 is a silver ring; both were satisfactorily identified.

"He also made an acknowledgment before the darogah which involves him in privity.

"Prisoner No. 9. Properties from Nos. 27 to 33 were found in this man's possession, all silver ornaments proved to belong to the prosecutor, and all unsuited to the prisoner's station.

"Prisoner No. 12. This prisoner was recognized by both the witnesses: was mentioned by prisoner No. 2 in his first report at the thanna; no property was discovered in his house, but his answer, in the nature of an acknowledgment, is attested (though not very satisfactorily) and acknowledged by himself before the magistrate; his defence is a plea of *alibi*, not established.

"The *futwa* convicted these prisoners of the crimes exhibited in the statement. No. 2 was sentenced severely, as he is an old offender and a chowkeedar."

Sentence passed by the lower court.—No. 2, fourteen (14) years' imprisonment in banishment with labor and irons. Nos. 5, 6 and 12, each, ten (10) years' imprisonment with labor and irons, and Nos. 7 and 9, each, seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I find no reason for doubting the propriety of the conviction and sentence in this case. The evidence to the finding of the property in the houses of Nos. 2, 5, 6, 7 and 9, and to

its being part of that plundered from the prosecutor's house is strong and conclusive, while that of identity as regards Nos. 5, 6 and 12, at the time of the robbery, has been consistent throughout the proceedings. Further, the admission of No. 12 to complicity in the robbery is attested, though not, as the sessions judge remarks, satisfactorily, by the subscribing witnesses. The convictions and sentences are confirmed."

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PRESENT:

J. R. COLVIN, Esq., *Judge.*

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

SREEMUNTO BAGDEE.

1852. April 27. Case of SREEMUNTO BAGDEE.

Capital sentence for murder. There was no proof of any provocation, or of any motive of jealousy, or jealous revenge, which might have led to the crime, but no such motive could have been received as an extenuation of it.

CRIME CHARGED.—Wilful murder of Digumburree Raur.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 26th March 1852.

Remarks by the additional sessions judge.—"The prisoner and the deceased woman Digumburree Raur had cohabited together about three years; he was a chowkeedar of one Jygopal, who lived about a quarter or half a mile from him, and in general he spent the night at the house of his master, according to the evidence of the witnesses. Mohesh Sirdar, witness No. 1, who was a chowkeedar, heard the deceased call out from inside her house, and he and No. 2, the chowkeedar of the village, tried to get into the house, but as they could not do so, and no one answered from within, they waited until the door was opened by the prisoner, who came out and was caught by them. The neighbours came, and it was seen that the prisoner's clothes were bloody; that one of his fingers had been slightly cut; that the deceased was lying with her throat cut; and that a razor was lying by her side, such as belonged to the prisoner, and which no doubt is his. The woman's throat was so cut that she must, in the opinion of the civil surgeon, have died immediately after receiving the injury. There is no evidence of the cause of the prisoner's hatred towards the woman. The prisoner in his defence denies any connexion with the deceased woman, and says that Mohesh, witness No. 1, beat him with a split bamboo, which was the cause of his clothes being bloody, but one of his clothes appeared to me to have had its edge dragged in a pool of blood, and in another part to have had blood spouted on it from a cut vein. There was no delay in the investigation of the case, as the

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darogah arrived on the spot in the morning, and there was no witness for the defence. I agree, therefore, with the law officer in finding the prisoner guilty, but I can give no reason whatever why he should not be punished with the most severe punishment. The place, the time, the connexion of the parties, and the manner of the murder are all against the prisoner, and it is therefore my duty to propose that he be punished with death.

"The weight of the razor with the handle is 1½ rupee, its length when open is nearly 7½ inches, and when shut is 4¾ inches. There is no clasp to prevent its turning back when it is opened."

Remarks by the Nizamut Adawlut.—(Present: Messrs. Colvin and Mytton.)—MR. MYTTON.—"The facts in evidence in this case are stated in the letter of reference of the additional sessions judge. The witnesses have been sufficiently consistent in their account of the facts within their cognizance, and I see no reason to doubt the truth of what they have deposed to.

"The prisoner, in his defence to the darogah and to the magistrate, attributed the murder to one of the witnesses, Mohesh, who apprehended him. In the sessions court, he denied all cognizance of the occurrence, and denied even his connexion with the deceased.

"The murder is, in my opinion, satisfactorily proved against the prisoner. If he had any provocation, the subject of it is alone known to him, and he has not stated it. The inference is, therefore, that it was not such as would palliate the crime. I agree with the sessions judge, that there is no reason for a mitigated sentence, and propose that the prisoner suffer death for his crime."

MR. J. R. COLVIN.—"There are some inconsistencies in the statements of the minor, or corroborative, witnesses in this case. But there is no doubt whatever as to the murder having been committed, and as to the prisoner having been seized on the spot, with his clothes much stained with blood, as he was leaving the house where the corpse of the deceased was lying, and where no one but himself was at the time seen. His endeavors to account for his having been then seized, and for his clothes having been found covered with blood, have been grossly inconsistent and quite unsupported, and are evidently worthy of no belief. The circumstances of the previous connexion of the prisoner with the deceased, together with the well-established facts as to the time and manner of his apprehension, clearly point to him as the murderer.

"Whatever may have been the motives of jealousy, or jealous revenge, which led to the murder, as to which there is no proof, they could not be received as any extenuation of it.

"*I concur in the proposed capital sentence.*"

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

MUSST. PUBURNEE

versus

RAMKISHOON.

CRIME CHARGED.—Rape.

Committing Officer, Mr. F. Hogg, deputy magistrate of Chumparun, Sarun.

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Case of RAMKISHOON.

The sentence proposed by the sessions judge, to be passed upon the prisoner, awarded by the Nizamut Adawlut on his conviction before them of rape.

Tried before Mr. C. Garstin, sessions judge of zillah Sarun, on the 26th March 1852.

Remarks by the sessions judge.—"I refer this case as it is clearly one which, under the Rules laid down in Section VI. Clause 2, Regulation XVII. of 1817, I am not competent to dispose of myself.

"The facts are shortly as follows:—The prosecutrix (a child of about eleven years of age) was herding cattle on the banks of the Tur Nuddee, when the prisoner, on the pretence of their having injured his field, seized and carried her off into an *urhur* field, and after tying her with some *putwa* to one of the trees (plants) in it, then and there forcibly ravished her person, after which he made off, and was taken only some three days afterwards.

"It happened that at the time this took place, a man named Dookhit was also grazing cattle near at hand; and he, seeing the girl carried off, called out to two men, who were cutting grass close by, and both of them, (witnesses Nos. 1 and 2) going into the *urhur* field, saw the prisoner in the very act of deflouring the child, but before they could reach him he made his escape, and they found her on the ground senseless and bleeding, when they took her home. She was afterwards sent into the station and was examined by the sub-assistant surgeon, who speaks most clearly as to the actual commission of the crime, and this statement is further borne out by the evidence given by two women, who also examined her, and who both speak clearly as to the consummation of the offence.

"Both before the magistrate and on his trial, the prisoner admitted having had connexion with the child, but on both occasions he has pleaded that it was at her own request; but there is no reason, I think, to believe this story, as she is too young to render it likely that she should have done this, and she was so much injured in her person (her back also was much lacerated from being forcibly pressed against the ground) that it is clear that the greatest force must have been used to effect the thing.

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darogah arrived on the spot in the morning, and there was no witness for the defence. I agree, therefore, with the law officer in finding the prisoner guilty, but I can give no reason whatever why he should not be punished with the most severe punishment. The place, the time, the connexion of the parties, and the manner of the murder are all against the prisoner, and it is therefore my duty to propose that he be punished with death.

"The weight of the razor with the handle is 1½ rupee, its length when open is nearly 7½ inches, and when shut is 4¾ inches. There is no clasp to prevent its turning back when it is opened."

Remarks by the Nizamut Adawlut.—(Present: Messrs. Colvin and Mytton.)—MR. MYTTON.—"The facts in evidence in this case are stated in the letter of reference of the additional sessions judge. The witnesses have been sufficiently consistent in their account of the facts within their cognizance, and I see no reason to doubt the truth of what they have deposed to.

"The prisoner, in his defence to the darogah and to the magistrate, attributed the murder to one of the witnesses, Mohesh, who apprehended him. In the sessions court, he denied all cognizance of the occurrence, and denied even his connexion with the deceased.

"The murder is, in my opinion, satisfactorily proved against the prisoner. If he had any provocation, the subject of it is alone known to him, and he has not stated it. The inference is, therefore, that it was not such as would palliate the crime. I agree with the sessions judge, that there is no reason for a mitigated sentence, and propose that the prisoner suffer death for his crime."

MR. J. R. COLVIN.—"There are some inconsistencies in the statements of the minor, or corroborative, witnesses in this case. But there is no doubt whatever as to the murder having been committed, and as to the prisoner having been seized on the spot, with his clothes much stained with blood, as he was leaving the house where the corpse of the deceased was lying, and where no one but himself was at the time seen. His endeavors to account for his having been then seized, and for his clothes having been found covered with blood, have been grossly inconsistent and quite unsupported, and are evidently worthy of no belief. The circumstances of the previous connexion of the prisoner with the deceased, together with the well-established facts as to the time and manner of his apprehension, clearly point to him as the murderer.

"Whatever may have been the motives of jealousy, or jealous revenge, which led to the murder, as to which there is no proof, they could not be received as any extenuation of it.

"I concur in the proposed capital sentence."

PRESENT:

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MUSST. PUBURNEE

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Remarks by the sessions judge.—" I refer this case as it is clearly one which, under the Rules laid down in Section VI. Clause 2, Regulation XVII. of 1817, I am not competent to dispose of myself.

" The facts are shortly as follows :—The prosecutrix (a child of about eleven years of age) was herding cattle on the banks of the Tur Nuddee, when the prisoner, on the pretence of their having injured his field, seized and carried her off into an *urhur* field, and after tying her with some *putwa* to one of the trees (plants) in it, then and there forcibly ravished her person, after which he made off, and was taken only some three days afterwards.

" It happened that at the time this took place, a man named Dookhit was also grazing cattle near at hand ; and he, seeing the girl carried off, called out to two men, who were cutting grass close by, and both of them, (witnesses Nos. 1 and 2) going into the *urhur* field, saw the prisoner in the very act of deflouring the child, but before they could reach him he made his escape, and they found her on the ground senseless and bleeding, when they took her home. She was afterwards sent into the station and was examined by the sub-assistant surgeon, who speaks most clearly as to the actual commission of the crime, and this statement is further borne out by the evidence given by two women, who also examined her, and who both speak clearly as to the consummation of the offence.

" Both before the magistrate and on his trial, the prisoner admitted having had connexion with the child, but on both occasions he has pleaded that it was at her own request ; but there is no reason, I think, to believe this story, as she is too young to render it likely that she should have done this, and she was so much injured in her person (her back also was much lacerated from being forcibly pressed against the ground) that it is clear that the greatest force must have been used to effect the thing.

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"The Moulvee convicts the prisoner on strong suspicion of the crime charged; and concurring with him, I now forward the proceedings for the orders of the court, and recommend that he, (Ramkishoon,) be sentenced for it to imprisonment with labor in irons for seven (7) years."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner's plea that the prosecutrix was a consenting party is contradicted by the evidence and the circumstances of the case, and is unworthy of belief. I concur with the sessions judge in the conviction of the prisoner and sentence him to seven (7) years' imprisonment with labor and irons."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

DINONATH BHOOMIK FOR GOVERNMENT *versus* LUKIKANTH CHUNDER.

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Case of LUKIKANTH CHUNDER.

A leader in a riotous attack on a person's house attended with murder and plunder, sentenced to imprisonment for life. Capital sentence not passed for reasons specified.

CRIME CHARGED.—1st count, wilful murder of Mokim Sheikh, by having wounded him with a spear and a *latter*, from the effects of which death ensued; and 2nd count, illegally assembling a great number of people, being himself present at the time and principal, for directing the house of Dinonath Bhoomik to be attacked and plundered, in which property to the value of rupees 2,060-8-0 was carried off, and also Kaseenath Manjee, Mohun Chung, and Madaree Sheikh, were wounded.

Committing Officer, Mr. J. Ward, joint magistrate of Pubna, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 24th March 1852.

Remarks by the sessions judge.—"As full particulars of the case were given by me in a letter, No. 12,* dated the 9th October 1847, which accompanied the trial of Turreepoollah and others, and again in a subsequent letter, No. 1*, dated the 12th

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* *Reports of the Sessions Judge of Rajshahye, No.* 12, *dated 9th October* 1847, *on the trial of Turreepoollah and others, Nos.* 13 *to* 19, *and No.* 1, *dated* 12*th January* 1849, *on the trial of Radha Madhub Chunder and others.*

Report No. 12, *of* 9*th October* 1847.—"Certain parties bought some land contiguous to the residence of Dinonath Bhoomik, and coming to him he pointed out the lands, when, according to the custom of the country, a bamboo was stuck up, to indicate that possession had been taken. They then went away.

"Dinonath on this began to throw up the earth from a ditch, or boundary line of his own premises, and which, it may be inferred, though not clearly in evidence, adjoined the land of which the purchaser had taken seizin. While so occupied, a large body of men came from the village of Beldea and began to demolish the tank and ditch he had been

January 1849, accompanying the trial of Radha Madhub Chunder and others, all of whom in both cases were convicted by the *futwa* and sentenced by the Court, (A. Dick, Esq., Judge,) on the 20th November 1847, and 10th February 1849, respectively,

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digging by the orders of two persons (named, but not among the prisoners,) on which he protested, but was answered with abuse, and orders were given to seize him, when he ran behind his *golah* and the rioters attacked his house. Mokim, (the deceased,) who was in the house, also protested against this invasion, when orders were given to *loot* and plunder it. A person by name Madhub Chunder then wounded Mokim with a *surkie*, and another struck him on the back with a stick, when he fell down. He was then removed by the other witnesses to a *Chundee Madhub*, or a house of worship. Dinonath then ran away to the thanna to complain, and on his return found Mokim lying dead, where he had been placed, the three others wounded, and his chests, &c., broken open and the contents gone, consisting of rupees 1,500 in cash, and rupees 560-8-0 worth of property. Dinonath deposed he had no dispute with the party who had committed this outrage; that Beldea (the place from which the rioters came) was close by; that he never touched the bamboo that had been fixed in the ground; that he himself had only ten *cottahs*, which he held under a *pottah;* that the persons wounded were his *ryots* and had come to his house on business. He then pointed out all the prisoners (including one acquitted) as having been present with the rioters.

"The three persons wounded corroborated the prosecutor's statement.

"Kaseenath recognized and named the prisoners Nos. 13, 16 and 19.

"Mohun Chung recognized Nos. 13, 14, 16, 18 and 19, but only knew No. 16 before. In the foujdaree he first named No. 16, and others not committed, adding he knew no more (the other prisoners were not then apprehended except No. 14); on his second examination, (on the 10th of July,) he pointed out the same prisoners he did in this court.

"Madaree Sheikh recognized none of the prisoners. Eleven other witnesses confirmed the statement of the above persons. One witness (No. 6) being the brother of Dinonath.

"These witnesses recognized all or most of the prisoners, and were nearly all neighbours of Dinonath, whose house was plundered.

"The witnesses (two), to the *sooruthal*, or inquest on the body, deposed to the wound on the left breast, which they were of opinion was the cause of death; and of which there can be no doubt. The *surkie* must have penetrated to the heart.

"The prisoners Nos. 13, 14, 16 and 17, set up *alibis*. The evidence in support of that of Nos. 13 and 14, was unsatisfactory; of No. 16 failed entirely; of No. 17 proved that he was *then* evading arrest; No. 18, pleaded illness at the time, but had named no witnesses in support of his plea; No. 19 pleaded he was ploughing his lands, and that he was unjustly implicated. Of six witnesses the prisoner examined three, who deposed to his ploughing his lands at a place two or three *coss* off on the day the outrage was committed.

"On a reference to the foujdaree depositions, some discrepancies will be found in the evidence, but till the second examination (on the 10th of July 1847,) no questions were put to the witnesses to test their evidence; and I reluctantly add, that both the police and the late officiating magistrate, Mr. Abercrombie, never attempted to trace out the origin of the dispute, or to apprehend the principal offenders.

"Now with regard to the person who killed Mokim Sheikh, there can be no doubt that his offence amounts to murder, being in every respect

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all that it is necessary for me now to allude to is the evidence against the present prisoner, the offence of which I consider him convicted, and the sentence that I beg to suggest may be passed on him.

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similar to that of Ameer Sirdar's* who was convicted by the court of murder and sentenced capitally. Under these circumstances, and adverting to the ulterior proceedings that may be held, I doubt if I am competent to punish, though approving of the *futwa;* but if I was competent, I should have sentenced the six prisoners included in this trial, to seven (7) years' imprisonment with labor and irons, as having been present, aiding and abetting in an attack on the house of Dinonath Bhoomik, in which attack Mokim Sheikh was killed with a *surkie,* three persons wounded, and cash and property to the value of rupees 2,060-8-0, plundered, and propose that they be so sentenced; for a grosser case of open violence I have not tried at Pubna, though celebrated and remarkable for gross outrages, and a total defiance set both to the police and the magistrate's authority.

"With this opinion I beg to leave the case in the hands of the court. The prisoners are all in jail, except No. 15, who, agreeably to the *futwa,* was acquitted, having set up an *alibi* which one witness proved, and with reference to this circumstance and his youth, I think it is doubtful if he was concerned."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.)—"The court convict the prisoners Nos. 13, 14, 16, 17, 18 and 19, of abetting, by their presence, the affray and attack upon the house of the prosecutor, Dinonath Bhoomik, and sentence them to three (3) years' imprisonment with labor in irons.

"The court observe that the only point proved against the prisoners was their mere presence, and no questions were put to ascertain whether they were armed, and what active part they took in the affray. They further observe, that not one of those proved to be the principals and real offenders have been apprehended and brought to justice; a fact most discreditable to the local police."

Report No. 1, *of* 12*th January* 1849.—"The reason for this reference is, that the *futwa* is *kissas* against the prisoner No. 1, and therefore it is out of my power to pass sentence on any of the prisoners.

"A full detail of the circumstances of the case were given by me in a letter, dated the 27th October 1847, No. 12, accompanying the trial of Turreepoollah and others, convicted by the *futwa* and sentenced by the court (A. Dick, judge,) on the 20th November 1847.

"All that is necessary for me to add is, that the witnesses (eight) confirmed their former statements. All deposed that No. 1 struck the deceased Mokim Sheikh with a *surkie,* and No. 2, with a stick. All also deposed that No. 3 gave orders, and all added that Nos. 4, 6, 7 and 8, were present with the party who made the attack on Dinonath Bhoomik's house, and that they were all present when Mokim Sheikh was killed and the others wounded, and the witness No. 6, Mokim Chung, also deposed that he was wounded by No. 4, with a sword.

"I now proceed to notice the defences set up by the prisoners, and the evidence of their witnesses. Nos. 1, 2, 3 and 4, (who are all brothers and cousins) made the same defence, *i. e.,* set up an *alibi*; and that they were

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* Nizamut Adawlut Reports, volume VI. page 53.

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"The witnesses Mohun Chung, Boodye Sheikh, Gobind Chunder Doss, Gurreeboollah Sheikh, Golabdee Sheikh and Roshun Sheikh before examined, were so again, and deposed that the prisoner gave orders, some say to kill and plunder, and

on the day of the occurrence (10th May 1847) in Calcutta, and on the 26th Bysakh (or 8th May), they gave a warrant of attorney to Mr. Hedger, a solicitor, to file a bill or suit for them in the Supreme Court; that in support of this, they had on the 10th May, lent to two clerks of Hedger's, by name Michael and Avjet, rupees 200, who gave them a bond and receipt for value received. No. 3, also pleaded that they had been sued in the Petty Court by a *modee*, who during the time they were in Calcutta supplied them with eatables, and referred to a process issued by the commissioner of the Petty Court, Baboo Russomoy Dutt.

"In support of this defence they examined eighteen witnesses, some of whom speak to their going to Calcutta early in Bysakh, others to seeing them at Hedger's office, and two to their lending money to Michael, for which he and another *sahib* signed a bond. This bond and a warrant of attorney the court returned to the joint magistrate to have authenticated, and the depositions of Hedger, Michael and Aviet were in consequence taken before the chief magistrate of Calcutta, on oath, and are filed with this record.

"The deposition of Michael alone tends in any degree to clear the prisoners; and considering the great delay on their part in delivering themselves up (Nos. 1 and 3, on the 8th October 1847, No. 2 on the 3rd January 1848, and No. 4 on the 9th October 1847,) I consider the whole a well-devised scheme to defeat the ends of justice.

"I do not believe a word of Michael's evidence or any of the witnesses for the defence in this court in support of the *alibis* set up by the prisoners. The court will notice the singular coincidence of the bond bearing the same date as this occurrence Again, the warrant of attorney is evidently signed by one person, though representing the act of four individuals; and all the four prisoners can write, and from the draft of the plaint it will be seen it was only prepared in Hedger's office in September 1847, though the warrant to sue was, it is alleged, given on the 8th May preceding, or four months before.

"Further, the prisoners incidentally mentioned that the bond had been paid in full. If so, how did they get it back? The whole savours of a well-got-up defence on which no reliance has been placed by the law officer, and I entirely concur with him in this respect.

"The prisoner No. 6 also set up an *alibi*, that he was at the time, 10th May 1847, employed in a passage boat running between Hooghly and Calcutta, and examined four witnesses in support of it; but I reject their evidence as tutored and got up. Also with reference to the great delay on the part of this prisoner in giving himself up (on the 3rd January 1848.)

"The prisoners Nos. 7 and 8, when called upon for their defence, pleaded they were then (10th of May 1847), cutting paddy in the Sunderbans; but declined examining any of their witnesses.

"Such being the nature of the defences made by the prisoners, and the evidence in support of them, and having before given a full detail of the circumstances of the case, it only remains for me to state what offence has been brought home to the prisoners, and the sentence that, in my humble opinion, should be passed upon them.

"The prisoner No. 1, there can be little doubt, was the person who wounded the deceased Mokim Sheikh with a *surkie*, and that he died in consequence of such wound; and the killing, I consider to have been

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others to *mar* (beat) and *loot* (plunder), and there can be no doubt whatever that he was both present and aiding and abetting, when Mokim Sheikh was, as before described, killed, and Kaseenath Manjee, Mohun Chung, (witness No. 1), and Madaree Sheikh, were wounded.

"The prisoner set up an *alibi;* but this his witnesses totally failed to establish.

"I, therefore, in concurrence with the opinion of the assessors, one the moonsiff of Kheytooparah, (who as law officer sat on the two first trials), and the other the cazee of Pergunnah Kutta, &c., (who resides at Pubna), suggest that the prisoner, as a principal in the second degree, and for being present, aiding and abetting in the attack on the prosecutor's house, when it was plundered of cash and property valued at rupees 2,060-8-0, and Mokim Sheikh killed and the parties named above wounded,

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murder, and so does the law officer, and his *futwa* declares *kussas* to be incurred.

"I am, however, disinclined to go such a length. There was nothing deliberate in the act; and a capital sentence would be useless as an example now that so many months (twenty) have passed since the crime was committed. I would, therefore, propose that he be sentenced to a longer imprisonment, extending to life in the Alipore jail, as he is not a person who could undergo any severe manual labor, and looks full the age (forty-five) set down opposite his name.

"The prisoners Nos. 2, 3 and 4, as principals in the second degree, and for being present, aiding and abetting in the attack on the house of Dinonath Bhoomik, when it was plundered of cash and property valued at rupees 2,060-8-0, and Mokim Sheikh was killed, and three others wounded (No. 4 wounded Mokim Chung, with a sword,) I would suggest he be sentenced to seven (7) years' imprisonment with labor or irons.

"The other three prisoners (Nos. 6, 7 and 8,) also for being present, aiding and abetting as above, I would suggest, be sentenced the same as the prisoners before convicted by the superior court, *viz.*, to three (3) years' imprisonment with labor and irons, or should the court wish to take into account the imprisonment they have already undergone (of upwards of a year) to two (2) years' imprisonment with labor and irons.

"With this opinion I beg to leave their case in the hands of the court. All are in jail, and have been so since they were apprehended. The prisoner Kirtee Manjee, No. 5, was released by the commissioner at the last sessions agreeably to the *futwa.*

"In conclusion, I may add that as a transcript of the proceedings of the sessions court was sent before, I have only, on the present occasion, sent a copy of the proceedings held before Mr. Taylor and *myself,* *since* the *former reference.*"

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick.)—"The court convict the prisoner No. 1, Radha Madhub Chunder, of mortal wounding in an affray, and sentence him to fourteen (14) years' imprisonment with labor in irons. Prisoner No. 2 of wounding and aiding and abetting in affray, and Nos. 3 and 4, of aiding and abetting by command in affray, and sentence all three to seven (7) years' imprisonment with labor in irons, and Nos. 5, 6, 7 and 8 of abetting, by their presence, the affray, and sentence them to three (3) years' imprisonment with labor in irons."

be sentenced to seven (7) years' imprisonment without labor or irons. 1852.

"His age is stated to be seventy-two, and he looks a very old man, and even should he outlive his sentence, long before it expires, he will be quite an incumbrance in the jail. He is the elder brother of the prisoners Junmojoy and Omakant Chunder, convicted by the court on the 10th February 1849, and who will no doubt look after him.

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Case of LUKIKANTH CHUNDER.

"In conclusion, I beg to add that as a transcript of the proceedings of the sessions court was before sent, I have on this occasion only sent a copy of the proceeding held on the present trial, or since the two former references."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"From the reports of the sessions judge on the trial of other prisoners charged with complicity in the crime with which the prisoner is charged and the papers in the *nuthee*, it appears that in 1817, 'Lukikanth Chunder and his brothers 'purchased some land contiguous to the residence of Dinonath 'Bhoomik, and, according to the custom of the country, a bam'boo was stuck up, to indicate that possession had been taken.' Dinonath began to throw up the earth from a ditch or boundary line of his own premises, and which it may be inferred, says the sessions judge, though not clearly in evidence, adjoined the land of which the purchaser had taken possession. While so occupied, Lukikanth Chunder and a large body of armed men came from the village of Beldea, and began to demolish the bank and ditch, against which he protested; but this was only met by abuse and cries to seize him. He escaped behind his *ghola*, when the rioters attacked his house. Mokim Sheikh, who happened to be in the house, protested against the invasion. Encouragement to plunder and assault being given by the prisoner now under trial, and others, Madhub Chunder speared Mokim Sheikh with a *surkie*, and Junmojoy Chunder hit him on the back with a stick. He fell. Dinonath ran off to the thanna, and on his return found that Mokim was dead from the effect of the wound in his chest, three others were wounded, and his boxes broken open, and the contents, valued at rupees 2,060-8-0, carried off.

Dinonath himself appears to have claimed the land on which the bamboo was put up, as in his *jote* under one of the partners of the party who sold to the Chunders.

"The prisoners at the first trial were charged,—1st, with being accomplices in the wilful murder of Mokim Sheikh, and wounding of three others; and 2nd with being accomplices in a riotous attack on prosecutor's house attended with murder, wounding, and plunder. None of the most active parties in the offence was before the court, but the sessions judge remarked that 'with regard to the person who killed Mokim Sheikh, there can

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'be no doubt but that his offence amounts to murder, being in 'every respect similar to that of Ameer Sirdar*, who was con- 'victed by the court of murder and sentenced capitally.'

"The sessions judge wound up his report by stating 'a 'grosser case of open violence I have not tried at Pubna, though 'celebrated and *remarkable* for gross outrages and a total 'defiance set both to the police and the magistrate's authority.'

"The prisoners at this and the succeeding trials pleaded *alibis*. No attempt was made to prove provocation.

"Mr. Dick, the presiding judge, on the first reference convicted the prisoners of abetting, by their presence, the affray and attack upon the house of the prosecutor, and sentenced them to three (3) years' imprisonment, with labor in irons. He observed that 'the only point proved against the prisoners was 'presence, and that no questions had been put to ascertain 'whether they were armed, and what active part they took in 'the affray.'

"The offence of which the prisoners were declared guilty by the sessions judge, was aiding and abetting in an attack on the house of Dinonath Bhoomik, in which attack Mokim was killed, three prisoners wounded, and property to the value of rupees 2,060-8-0, plundered.

"Mr. Dick's note does not explain his reasons for considering the offence to have been an affray, and for acquitting the prisoners of the most aggravating part of the charge, *viz.*, the homicide of Mokim Sheikh.

"In the following year (1848) the men who were said to have speared and struck the deceased, *viz.*, Radha Madhub Chunder and Junmojoy Chunder, together with several other principals in the case, were apprehended and brought to trial. The sessions judge in reporting the trial stated, that eight witnesses deposed to the first-named having speared the deceased, and he adds:—'There can be little doubt but that he was the person 'who wounded the deceased with a *surkie*, and that he died in 'consequence of the wound, and the killing I consider to have 'been murder, and so does the law officer; and his *futwa* 'declares him liable to *kissas*.'

"The sessions judge, however, gave as his opinion, that there was nothing deliberate in the act, and that a capital punishment would be useless as an example, as so many months (twenty,) had passed since the crime was committed. He, therefore, proposed a sentence of imprisonment for life. Junmojoy and two prisoners, who were proved to have encouraged the rioters by their commands, were recommended to be imprisoned for seven (7) years, and others for three (3) years.

Nizamut Adawlut Reports, vol. VI., p. 53.

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Case of Lukikanth Chunder.

"Mr. Dick convicted Radha Madhub of 'mortal wounding 'in an affray' and sentenced him to fourteen (14) years' imprisonment with labor and irons. He convicted the others of aiding and abetting in an affray, and approved of the sentence proposed. From the finding and sentence against Radha Madhub, it would appear that the presiding judge drew some distinction between mortal wounding and homicide; but the distinction is not self-apparent, and it has not been explained by him, nor has he left on record his reasons for considering these prisoners 'not guilty,' of an attack on Dinonath's house, of which offence he, however, convicted those included in the first reference. I regret that I have not had the advantage of ascertaining his views more fully.

"The prisoner now under trial is Lukikanth Chunder, the person who stands foremost in the deposition of the prosecutor at the thanna and before the magistrate, as having brought the tumultuous assemblage, and as having encouraged them to assault and plunder. The evidence of eight witnesses is recorded to this effect, and the defence is that which is common to all that have no good one to make, *viz.*, *alibi* at Kalighat.

"The sessions judge, in accordance with the verdict of assessors, finds him guilty as a principal in the second degree, being present, aiding and abetting in the attack on the prosecutor's house, when it was plundered of cash and property valued at rupees 2,060-8-0, and Mokim Sheikh killed and three persons wounded, and, considering his age, and probably the sentences passed by this court with respect to the others, he recommends that he be only imprisoned for seven (7) years.

"The finding is deficient, in not defining the class of crime to which the homicide of Mokim Sheikh belongs.

"In my opinion it is unquestionably wilful murder, and the prisoner having been proved to have incited the gang to violence, is a principal in that murder.

"The outrage was characterized by the sessions judge as one of the grossest description, and no attempt whatever has been made to palliate it. It occurred in a part of the country where such outrages are unfortunately too common, and where, therefore, leniency to the offenders is mistaken mercy. Were it not that the actual perpetrator of the murder has only been sentenced to fourteen (14) years' imprisonment, and it might appear a startling thing to execute another of the party though apparently he was the leader, I should have been inclined to propose a capital sentence.

"Taking, therefore, this view of the case, I cannot pass so lenient a sentence as that proposed by the sessions judge, *viz.*, seven (7) years' imprisonment without labor or irons. The age of the prisoner (72,) is not a sufficient reason in my estimation, to justify it.

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"The prisoner is found guilty of being a principal in an attack upon the house of Dinonath Bhoomik attended with the wilful murder of Mokim Sheikh, wounding of the other persons, and plunder*, and sentenced to imprisonment, with labor in irons for life in the Alipore jail. The great age of the prisoner is the reason of transportation not forming part of the sentence."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

NOBIN CHUNDER KURMOKAR

versus

LUKHI NAPTINI (No. 1).

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Case of LUKHI NAPTINI.

The prisoner, a female, attempted to murder the prosecutor by cutting his throat.

CRIME CHARGED.—Wounding the prosecutor with intent to murder.

CRIME ESTABLISHED.—Wounding the prosecutor with intent to kill him.

Committing Officer, Mr. A. Hope, assistant magistrate, exercising the powers of joint magistrate at Santipore, zillah Nuddea.

Tried before Mr. J. C. Brown, sessions judge of zillah Nuddea, on the 16th March 1852.

Remarks by the sessions judge.—"The prosecutor has deposed that he had been to Calcutta, to work as a silversmith, and having earned rupees 15 he returned to his home to Chowgatcha, where the prisoner also lives. After he had been at home two or three days, the prisoner applied to him for the loan of some money, which he declined, giving her as his reason that he intended to pay the amount to his creditor *(mahajun)* in liquidation of a debt due by him. The prisoner said, she would pawn some ornaments she had, but he refused, saying, if she had anything to pawn, she would have no difficulty in obtaining a loan elsewhere. After this conversation he went to a tank close by to bathe, and the woman followed him with her water pot; while he was bathing and subsequently performing his devotions, the prisoner remained loitering near him. He said nothing to her, but went to his home and saw nothing more of her. In the evening, after night-fall, the prosecutor went to the same tank where he had bathed to answer the calls of nature, and as he was washing his hands, the prisoner, who had no doubt been watching him and his movements, came up to him, saying, she had brought the ornament she wanted to pawn, and he replied, that that was neither the proper time nor place for such transactions, and she ought to have gone to his house. After giving her this answer,

* N. B.—This is in fact only a condensement of the first and second counts on which he was tried.

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he resumed washing his hands, and was stooping a little over, when the prisoner slipped behind him, and the first intimation he had of her having done so was feeling his head suddenly drawn back, and his throat being cut. He had the presence of mind to throw up his hands, and he seized the wrist of the prisoner with one hand, and laid hold of her hair with the other and then shouted for assistance, which he was well able to do, as the cut, though about five inches in length, was little more than skin deep, and though the blood flowed profusely, the windpipe was untouched. His house being near, his relations and neighbours heard his cries for help and ran to the spot, and found him holding the woman as above described. As soon as he made over charge of the prisoner to them, he fainted from loss of blood. The prisoner has not told the same story throughout, as what she said in the Mofussil, before the assistant magistrate, and in her defence in this court does not agree in some particulars, she, however, confirms the statement of the prosecutor regarding having asked him for money and his refusing her, and also acknowledges having followed him to the tank after dark, but declares it was according to his own instructions that she went there, and that she found two or three persons unknown to her, and they were disagreeing and quarrelling amongst themselves; that suddenly the prosecutor's throat was cut and they seized her and charged her with the crime. She had no witnesses.

"The prosecutor's witnesses have corroborated all his statements, with the exception of what occurred prior to the attempt to take his life, and that is admitted in a great measure by the prisoner. On comparing the vernacular proceeding of commitment with the calendar, I found that in the former the motive for the commission of the crime was clearly stated, but in the latter it has been omitted. The magistrate has given the following explanation :—

" 'In reply to your letter No. 43, of the 16th instant, I have 'the honor to inform you that the commitment and report of the 'same (letter No. 20, of 5th March,) were drawn up and sent to 'your office by Mr. Hope, formerly assistant to the magistrate, 'with powers of joint magistrate, and that I am unable to 'account for the discrepancy between the charge contained in 'the report and that in the vernacular proceeding. The words '"for the sake of the money the prosecutor had" not having 'been included in the charge in report No. 20, I did not deem 'it expedient to make any addition to, or difference with, that in 'the calendar, though I observed its necessity when drawing 'out the remarks. I beg to return the papers referred to in the 'postcript of your communication prior to sending the calendar 'for Mr. Hope's signature.' "

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Case of Lukhi Naptini.

Sentence passed by the lower court. Fourteen (14) years' imprisonment, with labor suitable to her sex, without irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"This a singular case, and of rare occurrence in this part of India; it is that of a woman attempting to murder a man, apparently for the purpose of robbing him, but the motive has not, inadvertently, been charged against the prisoner. The guilt of the prisoner is satisfactorily proved. Her defence is neither supported by probability nor evidence. I see no reason to interfere with the finding and sentence of the sessions judge."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

AFFZUDDEEN.

versus

MALLOO (No. 1, APPELLANT), SHEIKH MUNERUDDEEN (No. 2, APPELLANT) AND NUJEEBOOLLAH* (No. 3).

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Case of Malloo and others.

The sentence passed by the sessions judge, upon the prisoners convicted of culpable homicide, affirmed.

CRIME CHARGED.—Affray, attended with culpable homicide of Shabazooddeen, and wounding Suleemooddeen, and Nos. 2 and 3, aiding and abetting in the above-mentioned crime.

CRIME ESTABLISHED.—No. 1 culpable homicide of Shabazooddeen, and Nos. 2 and 3, aiding and abetting in the above crime.

Committing Officer, Mr. T. B. Mactier, joint magistrate of Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 3rd February 1852.

Remarks by the sessions judge —"The prisoner No. 1 is charged with affray attended with culpable homicide, and the prisoners Nos. 2 and 3 with aiding and abetting in the same. It appears that on the 27th of Assin last, a dispute arose between the prisoner Nujeeboollah and Ledoo, a relative of the prosecutor, regarding a piece of rope, which Ledoo's younger brother had taken from Nujeeboollah's house, and that Ledoo struck Nujeeboollah, who called the prisoners Nos. 1 and 2 to his assistance; at this time Sulleemooddeen and Subazooddeen (deceased) the prosecutor's brother, also joined them, and remonstrated with the disputant, when the prisoner No. 1, by order of the prisoner No. 2, first struck Suleemoodddeen with a *lattee* and wounded him, and then attacked deceased, and dealt him a heavy blow on the head, which felled him to the earth, and he died immediately. The above circumstances are fully established by the evidence of the eye-witnesses, and the

* No. 3 was acquitted by the lower court.

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Case of MALLOO and others.

deposition of the sub-assistant surgeon shows that he examined the body of deceased and found an extensive fracture of the skull, apparently from a blow inflicted with a *lattee*, and which, in his opinion, was the cause of death. The prisoners Nos. 1 and 2, deny the charge, and have set up *alibis;* but the witnesses called by them do not say anything in support of these pleas. The *futwa* of the law officer convicts the prisoner No. 1, of the culpable homicide of Shabazooddeen, and the prisoner No. 2 of aiding and abetting the same; and, in concurrence with this finding, they have been sentenced as described in column 12."

Sentence passed by the lower court.—No. 1, five (5) years, imprisonment, with labor and irons, and No. 2, three (3) years' imprisonment, without irons, and a fine of fifty (50) rupees or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The evidence is direct and strong that the deceased died instantly from the effects of a blow on the head which was inflicted by the prisoner Malloo with a club at the command of the prisoner Sheikh Muneerooddeen. The pleas of *alibi* are not substantiated.

"The conduct of the prisoners was quite unjustifiable, and I confirm the conviction and sentence."

PRESENT:

SIR R. BARLOW, BART. and W. B. JACKSON, ESQ., *Judges*.

A. J. M. MILLS, ESQ., *Officiating Judge*.

GREES CHUNDER ROY

versus

LULEET KOOMAR ROY (No. 1), ESHAN CHUNDER ROY (No. 2), PEAREE* LAUL ROY (No. 3), MOHES CHUNDER ALIAS RAM CHUNDER ROY (No. 4), SHEEB CHUNDER MITTER (No. 5) AND HURRIS CHUNDER MITTER (No. 6).

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Case of LULEET KOOMAR ROY and another.

One prisoner was acquitted, the other prisoner was convicted of wilful murder, of the deceased, by stabbing him through the heart with a dagger or knife, on the evidence of several witnesses. It was proved that previous enmity existed between the parties. The prisoner endeavoured to establish an *alibi*, but the evidence for the defence failed altogether in supporting that plea. Capital sentence was passed upon him.

CRIME CHARGED.—No. 1, wilful murder, in having, on the 7th October 1851, corresponding with the 22nd Assin 1258, stabbed with a knife Muheema Chunder Roy on the breast, from the effects of which wound he then and there died. Nos. 2 to 6, 1st count, accomplices to the wilful murder of Muheema Chunder Roy; 2nd count, accessaries before and after the fact to the above-mentioned crime; and 3rd count, privy to the commission of the above-mentioned crime.

Committing Officer, Mr. T. B. Mactier, joint magistrate of Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 21st February 1852.

Remarks by the sessions judge.—"The circumstances of this case are very singular. The deceased, Muheema Chunder Roy, was an extensive and influential landholder and uncle to the prisoners Luleet Koomar Roy and Eshan Chunder Roy. They all lived in the same homestead.

"It appears that on the night of the 7th of October last, the deceased was celebrating the *sutnaram poojah*, and a large number of guests were assembled participating in the ceremony. Some of the party were in the Chundee Dalan, partaking of the *prusaad*, or sacred food, others outside of it, and the host (deceased) walking to and fro in the *Nath Mundir*, which is close to, and in front of the said Dalan. At this time, it being about 9 o'clock, Eshan Chunder Roy (prisoner No. 2), came from the Chundee Dalan into the *Nath Mundir*, and having declined to partake of the *prusaad*, the host is said to have made a demand on him for money, which he had long owed him. The prisoner denied the debt, when deceased threatened him with detention unless the claim was satisfied,

* Nos. 3 to 6 inclusive were acquitted by the lower court.

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and one Essur Khansaman, a servant of the deceased, came in front of the prisoner to oppose his departure. On finding himself thus detained he called out to his brother, Luleet Koomar Roy (prisoner No. 1,) that he was going to be imprisoned, and on hearing this cry for assistance Luleet Koomar rushed out from behind his own Mundub Ghur, which is also close to the Nath Mundir, and stabbed Muheema Chunder Roy in the breast with a dagger; he staggered a few steps after receiving the wound and fell to the ground lifeless. The prisoner, after striking the fatal blow, immediately fled by the same way that he entered the *mundir*, *viz.*, by the back of his own *Mundub Ghur*. The facts of the case as above detailed are sworn to by no less than nine eye-witnesses, Nos. 2 to 10. They state besides that previous enmity existed between the deceased and the prisoners regarding some lands comprising their *jote*, which had been purchased by deceased, and the Rajapore bazaar which he had destroyed.

"It has been stated above that the occurrence took place at about 9 o'clock in the evening. Information was given at the Sudderpore police station by the witness No. 8, before day-break on the following morning, and the mohurir stationed there immediately repaired to the spot, and held an inquest on the body, the witnesses to which have been examined before this court, and depose to the wound on the breast of deceased. The sub-assistant surgeon's evidence goes to show that he examined the body of deceased, and found a deep punctured wound on the right side of the chest, about one inch in width, four inches in depth, wounding the heart, and causing great extravasation of blood, with which the chest was nearly filled; and that, in his opinion, the said wound was the cause of Muheema Chunder Roy's death.

"It is attempted to be shown by the witnesses Nos. 5 and 6, that the murder of Muheema Chunder Roy had been previously planned by the prisoners; and some of the other witnesses also speak to having heard the prisoner Luleet Koomar Roy use threats against the life of deceased; but their statements on this point I consider entirely untrustworthy: indeed the evidence of the two witnesses Nos. 5 and 6, as a whole, is not altogether free from suspicion.

"The prisoner Eshan Chunder Roy was arrested on the 10th October, three days after the occurrence, and in his answer *before the police*, recorded on the following day, he stated that about 10 o'clock on Tuesday night (7th October) after his uncle Muheema Chunder Roy had been killed, he and his brother Luleet Koomar and their Dewan, Sheeb Chunder, went to the house of Kishen Govind Nundee at Dular Danghee; that they left Luleet Koomar there and returned; that on the Thursday

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following, they went again to the Nundee's house, to bring Luleet Koomar and hand him over to the magistrate; but on their arrival there found that he had absconded. Before the magistrate he urges that deceased was in the habit of fencing with his *latteeals*, and that he was wounded by one of them with a sword, and died of the wound; that on the night of the occurrence he was at *Mutoorah*, which place he left on Thursday and arrived at Kishen Govind Nundee's house on Friday morning, where he was arrested. He urges that his answer given to the police mohurir was dictated by him under the influence of fear. In this court the prisoner sets up the same plea of absence from his home on the night of the occurrence, and adds that his brother Luleet Koomar Roy went to Calcutta in Bhadoon last.

"The prisoner Luleet Koomar Roy, who was arrested in Calcutta by the police of the magistrate of 24-Pergunnahs, denies the charge, and urges that he was in Calcutta on the date of the occurrence, whence he had proceeded in Bhadoon last (crime committed on the 22nd Assin). He further alleges that his uncle came by his death from a wound received while sword-practicing with one of his own men; and that the case has been got up against him through enmity: he calls witnesses to support the *alibi*.

"The *futwa* of the law officer convicts the prisoner Luleet Koomar Roy of the wilful murder of Muheema Chunder Roy, and declares him liable to *kissas;* and in this finding, for the following reasons, I concur. It is proved by the evidence of nine eye-witnesses that the prisoner stabbed the deceased in the breast with a dagger; that after receiving the wound deceased staggered a few paces and dropped dead; and the evidence of the medical officer proves that his wound was the cause of death. Besides the evidence of the witnesses to the fact, the circumstantial evidence goes to show that the prisoner fled from his house with all his family on the night of the occurrence.

"The *alibi* set up by the prisoner cannot, in the face of the positive evidence against him, avail him anything; for if he had, as is urged, been in Calcutta since Bhadoon last, up to the date of his arrest, why were not some friends, or acquaintances, moving in the same sphere of life as the prisoner, and with whom he would have necessarily associated, produced in support of the plea, instead of such witnesses as have been called. And, moreover, as the law officer observes in his *futwa*, why did not his own brother, Eshan Chunder and the other prisoners, in their answers before the police and joint magistrate, instead of admitting his presence, assert this important fact, which, if true, was not only sufficient to refute, but to establish the falsity of the charge? Considering the prisoner Luleet Koomar Roy convicted by the evidence and circumstances of the case of the wilful

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murder of Muheema Chunder Roy, I cannot propose any other than a capital sentence.

In the conviction of the prisoner Eshan Chunder Roy, I do not concur. All that is proved against him is, that when detained by the servant of deceased for the debt against him, he called out to his brother, Luleet Koomar Roy, complaining of the detention. I do not think that he can even be suspected of a thought, that his call for assistance would have produced the fatal result which followed it. Neither do I consider that his presence at the time of the murder, under the peculiar circumstances of the case, where there were so many other by-standers, implicates him in the crime. I would, therefore, recommend an acquittal.

"The prisoners Nos. 3 and 4 are related to Luleet Koomar Roy and Eshan Chunder Roy, and they live in the same homestead. Nos. 5 and 6 are their servants. They are all charged with accessaryship and privity. The evidence adduced in support of these charges, I have above remarked as not being trustworthy. It is highly incredible that the prisoners who had ample opportunity, had they *previously planned* the murder of Muheema Chunder Roy, of carrying out their purpose in secret, should have chosen such a place and time for its commission.

"The fact of their having absconded does not either, in my opinion, prove anything against them. It appears quite natural that after the occurrence of such a tragedy, these prisoners should, on the impulse of the moment, have fled from the homestead, to save themselves and their females from the risk of indignities; and such flight cannot, I conceive, be held to establish against them the crime of aiding and assisting the flight of the murderer.

"The prisoners Nos. 3, 4, 5 and 6 have consequently, in concurrence with the *futwa* of the law officer, been released."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Messrs. W. B. Jackson and A. J. M. Mills.)—SIR R. BARLOW.—"There can be no doubt that the prisoner Luleet Roy though he has endeavoured to establish an *alibi*, was present on the occasion of the murder with which he stands charged. He has been defended by two pleaders in the court. The one argues that under no circumstances can this be a case of wilful murder; that the whole story is a fabrication; that the prisoner could have no object in killing the deceased, his uncle. The other counsel took up the same line of defence, but added that the death probably was caused by excess of drink and that the deceased's body was wounded after death. The prisoner has himself in the magistrate's court and before the sessions judge pleaded *alibi*, and the witnesses examined on his behalf have deposed to his presence at Calcutta from the early part of

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Assin to the end of Kartick or beginning of Aghun 1258. It has been to my satisfaction clearly proved that the prisoner was never seen at Manickdeh, where the murder was committed, from the date of its occurrence; several witnesses have deposed that search was made for him at the moment, but he and all his family had run off. The evidence of Bhugban Chunder Dutt and Haran Chatterjea proves that the prisoner with all his family were at Haran's house at Adampore, where he went to procure a boat in order to transport his family to Alghee. Numerous eye-witnesses, whose statements throughout are consistent, swear to the prisoner as being the individual by whose hand the deceased fell. The inquiry held by the police immediately information was given, and before any story could have been got up, confirms the fact, and is, in my judgment, conclusive as to the prisoner's guilt. The sessions judge and his law officer, as well as the law officer of this court, convict the prisoner also of the act of killing the deceased.

"The sessions judge recommends a capital sentence.

"I have attentively considered all the evidence in this case, by which I am clearly of opinion that the crime charged has been brought home to the prisoner. I see no circumstances of extenuation in the case. The prisoner on being addressed by his brother Eshan answered, do not fear I will be with you presently, came out of his own house *armed with a dagger or knife*, the sheath of which, found on the spot, was recognized as the prisoner's property. On approaching the deceased, he asked for no explanation, made no remonstrance, but went up to the deceased and stabbed him through the heart. No provocation was given to the prisoner at the time, none that would justify any violence, much less the use of a deadly weapon. It is in evidence that disputes had long existed between the deceased and the prisoner, whose share in some land the former had purchased, and though I do not credit the accounts of his having openly expressed a determination to kill the deceased, I can find in addition to the cause assigned by the witnesses sufficient motive, in the fact of the enmity which had long existed between the parties, for the deed which the prisoner perpetrated.

"I would, as recommended by the sessions judge, pass capital sentence on the prisoner.

"I would acquit the prisoner Eshan Chunder Roy, on the grounds recorded by the sessions judge."

MR. W. B. JACKSON.—"The main facts in evidence are as follows. The *sutnaram poojah* was being celebrated at the house of deceased, and a number of guests were invited; among them Eshan Chunder, the prisoner, who went, but would not eat any of the *(prusaad,)* holy food, of which the guests are expected to partake. This, it appears, is considered a want of

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civility towards the host. This was in the *poojah* hall where the guests were assembled, and the prisoner Eshan Chunder had been reading the sacred book to them. The deceased then went into the *Nath Mundir*, another room, and Eshan Chunder followed him there; deceased then taxed him with a debt, which Eshan Chunder denied altogether and refused to pay; the deceased then told Eshan, he should not go away till he paid him, and called for his khansaman Essur, and told him not to let him go till he paid. Essur khansaman accordingly took charge of him, and told him he should not leave the room till he paid; deceased still standing there. On this Eshan called out to his brother, who lived in an adjoining house, 'brother, brother, they 'are putting me in prison to extort money'. He repeated this calling out several times. Then his brother, the prisoner, Luleet answered, 'never mind, I am coming.' Immediately afterwards Luleet came in to the *Nath Mundir* and struck deceased on the chest, who said I am killed, staggered a short distance and then fell down and died. Luleet, prisoner, after striking the blow, ran off by the way he had come in, and the witnesses say that after the blow was struck, they saw a knife in Luleet's hand, which he carried away with him. A sheath is produced as having been found near the spot, which several witnesses recognize as the property of the prisoner Luleet. The defence set up by Luleet is that he was in Calcutta at the time of the occurrence; that there is no reason assigned for his committing such a murder, it is, therefore, extremely improbable; that he believes the deceased met his death by some accident in playing with his dependents with swords; that he was of drunken habits, and was drunk at the time.

"There is no evidence to the fact that deceased was killed in any other way than that mentioned by the witnesses for the prosecution; nor that he was of drunken habits. Several witnesses to the defence swear that they saw the prisoner Luleet in Calcutta, from the 5th Assin to the 8th or 10th of Aghun, the murder being said to have happened on the 22nd Assin. The evidence is positive enough, and circumstantial, but as several witnesses to the prosecution say that Luleet left his own house immediately after the murder, and could not be found, it is possible that he did actually come to Calcutta, and that this evidence to his plea is true with the exception of the dates.

"As to the charge against Eshan Chunder, I am of opinion, that no crime is established against him. He was illegally detained by the deceased, and though he called to the other prisoner Luleet for help, he is not responsible for the violence which Luleet chose to commit in order to liberate him. I would acquit Eshan Chunder altogether.

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"I am not satisfied with the evidence to the *alibi* as opposed to the consistent depositions of the evidence for the prosecution, consistent at least with regard to all the important features of the occurrence. Nine eye-witnesses depose to the fact, and no personal enmity on their part, or other sufficient reason, is assigned for supposing that they have given false depositions. I do not believe the assertion of some of the witnesses that Luleet had been heard before to threaten, that he would murder the deceased; but I have no doubt that Luleet did kill the deceased in the manner stated, and for the reason assigned, *viz.*, that the deceased had detained his brother to get money from him, and his brother had called on him for help several times. Had Luleet first tried to take away his brother peaceably, and only struck when he was opposed by force, the case would have been different. He did not do this, but struck deceased at once with a deadly weapon, which it seems entered on the right side and penetrated the heart on the left. The detention of his brother cannot be held to justify him in such an act. Though it was an illegal oppression, and could have justified the prisoner, his brother, in using force in order to liberate him, it was certainly a serious provocation, and ought to be considered in the sentence, I would therefore convict the prisoner Luleet of murder, and, in consideration of the circumstances above detailed, I would not inflict a capital punishment but sentence him to imprisonment for life."

MR. A. J. M. MILLS.—"I entirely concur with Sir Robert Barlow, Bart. and Mr. Jackson, in the conviction of the prisoner Luleet Koomar Roy of wilful murder. The fact of the prisoner stabbing deceased to the heart, and of his immediately flying with his family from their common dwelling-house, is most clearly and satisfactorily established. Nine eye-witnesses consistently depose to the prisoner perpetrating the deed.

"It has been urged by the counsel for the prisoner that the omission to take the best evidence, that of Essur khansaman, raises the presumption that it was withheld for some sinister purpose; that the fact of no blood having been found on the ground where the deceased fell, warrants the supposition that the wound was inflicted after death, and that the account given of the occurrence by the witnesses is too improbable to be believed. The first objection is of no weight, the name of the servant, who prevented the exit of Eshan Chunder Roy, was only elicited at the trial, and as he was a servant of the deceased, it was, I think, unnecessary to summon and examine him, when so many less interested witnesses had spoken to the fact.

"The size and site of the wound, being only an inch in width, and on the side of the chest, and the circumstance of its penetrat-

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ing the heart, and causing the cavity of the chest to be filled with blood, sufficiently account for there being little external bleeding, while the opinion of the sub-assistant surgeon as to the wound having caused the death of the deceased, is clear and conclusive.

"As regards the third objection, I see no reason to doubt either the credibility of the evidence or the probability of the narrative. The attack was singularly bold, but it is not less worthy of belief on that account.

"The prisoner has set up an *alibi*, but it is not supported by respectable witnesses, and cannot avail against the strong and convincing evidence for the prosecution.

"Rejecting the evidence to previous threats and plots to take the life of the deceased, the case stands thus:—The deceased, vexed at Eshan Chunder's refusal to partake of the holy food, desired his servant to detain him for debt. Eshan Chunder shouted out to the prisoner several times, saying '*dada*, *dada*, my uncle 'is about to confine me;' he replies, 'do not be afraid, I am coming'; he rushes out and, without a moment's reflection, or a word of expostulation, stabs his uncle to the heart and runs off.

"The servant merely opposed the departure of Eshan Chunder; no violence was used towards him, nor was any such indignity offered to him as was likely to move even a brother's temper to violent passion, and it is impossible, I think, to attribute the giving of such a wound with such an instrument to the passion of anger, excited by the brother's detention. There had long existed enmity between the parties, and this fact strengthens the inference, which is reasonably collected from the circumstances of the case, that the prisoner intended to kill the deceased; for the law supposes that an act of such ferocity, committed upon so slight a provocation, must be the result of malice, of a previous determination to inflict such vengeance upon any pretence that offered. I think it is highly essential to the security of life, that we should not admit slight causes of provocation to mitigate the punishment, which under the law a murderer justly incurs; and the present case exhibits no features which would, in my opinion, justfy a secondary sentence. It is murder aggravated by the circumstance of the relationship which the murderer bore to the deceased, and I concur with Sir Robert Barlow, Bart., in passing a capital sentence."

NOTE.—After the conclusion of the above trial, the Sessions Judge of Dacca submitted a petition from a person named Joomun Sirdar, with the following letter, No. 262, dated 10th May 1852:

"I have the honor to transmit copy of a proceeding, dated the 7th instant, from the joint magistrate of Furreedpore, with copy of a petition of one Joomun Sirdar which accompanied it, received by me yesterday, (Sunday), and beg to solicit the court's orders thereon.

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"The petitioner comes forward and declares that he inflicted the wound which caused the death of Baboo Muheema Chunder Roy, of whose murder, Luleet Koomar Roy has been convicted and capitally sentenced.

"The court will perceive that this is nothing more than a further attempt to establish the plea set up by the prisoners at the trial, *viz.*, that deceased was killed while sword practising with some of his retainers.

"Two of the three parties named as having gone in the Lall Dinghy with deceased, and got drunk with him, appear to be the witnesses Nos. 1 and 2, entered on the calendar for the prosecution (No. 1, died before the trial came on, but was examined in the foujdaree court,) and I think it possible that *Zumeer Sirdar* may be Summeeroorddeen No. 6.

"The risk incurred by the prisoner in thus coming forward with a voluntary admission of having killed Muheema Chunder Roy, is in fact nothing, for the act admitted amounts to only that of accidental homicide.

"I have considered myself bound, pending the orders of the court, to stay the execution of my warrant; but I beg to state that I consider the contents of the petition utterly false, and unworthy a moment's consideration.

"I would recommend that the petition be treated as false on the face of it, that the petitioner be forthwith discharged, and that the law take its course."

On the above, the court,—(Present: Sir R. Barlow, Bart., and Mr. A. J. M. Mills,) passed the following Resolution, No. 666, dated 17th May 1852.

"The court having perused the papers above recorded, observe that the petition of Joomun Sirdar, in which he states that he accidentally killed Muheema Chunder Roy, for whose murder sentence of death has been passed upon Luleet Koomar Roy, reiterates a plea which was urged by the prisoner himself on his trial, without mentioning the name of the individual who killed the deceased. That plea was fully considered; and of the three persons named by the petitioner as being present when the blow was inflicted, Hur Chunder Sircar, since dead, was examined on oath in the foujdaree court, and Neel Monee Sein in all the courts. The depositions of these witnesses are on the record.

"The court attach no weight whatever to the fact of the petitioner coming forward to take upon himself the minor responsibility of accidental homicide, while at the same time they observe that the strongest possible evidence on the part of the prosecution has been adduced in proof of the murder by the prisoner Luleet Koomar, and has been met by the worst defence that could be urged, if disproved, that of *alibi*. To that point no sufficient evidence has been brought forward; nothing that in the least degree throws discredit, or even doubt upon the clear and full proof which was immediately furnished of the prisoner Luleet Koomar Roy's guilt by the local inquiry and by the consistent evidence throughout the trial.

"It is therefore ordered that the petition of the petitioner Joomun Sirdar be rejected as having no foundation in fact. The sessions judge will, on receipt of these orders, carry out the sentence of death passed on the prisoner Luleet Koomar Roy, as directed by the court's sentence of the 28th ultimo."

While the above reference from the sessions judge of Dacca was under consideration, another petition was presented by Ramsunker Bose, on behalf of Luleet Koomar, and the following Resolution, No. 667, dated 19th May, was passed, by the court.—(Present: Sir R. Barlow, Bart., and Mr. A. J. M. Mills.)

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"The court, having duly considered the petition presented on behalf of the prisoner Luleet Koomar Roy, by the petitioner, record as follows:

"The petition states that the party who first gave information at the thanna named three witnesses, whereas the second informant named several others. All of the witnesses are relations and dependents. The eye-witnesses on the record were never named by the above informants. Certain witnesses named by the informants are people of respectability, Anund Chunder Mitter, Moheis Chunder Bose, Nobokoomar Dutt, Sreenauth Ghose, Kalachand Baboo and others, and refused to give false evidence. Other witnesses have been prepared, and after a lapse of time their depositions have been caused to be taken. Koosaie Dutt, named by the first informant, refused to give false evidence, and was made a defendant by the second informant. He was tampered with afterwards, and caused to give evidence, as though a witness. Essur khansaman and several other witnesses named by the two informants and especially Essur khansaman has not been examined in any court. That it is clearly proved that the prisoner Luleet Roy was in Calcutta, there are several respectable witnesses still in Calcutta. If their evidence be taken more will be disclosed; Joomun Sirdar has told the real facts of the case, and confessed himself to be the party obnoxious to punishment, and prayed for an investigation. The case has been got up by the heirs of the deceased Muheema Chunder, who are at enmity with petitioner, who prays the additional evidence and Joomun's answer may be taken.

"The court remark that this petition contains some fresh matter. It endeavours to throw discredit on the evidence for the prosecution, states that certain respectable witnesses refused to give evidence; on which others were tutored and then examined; adds that other witnesses remain to be called for to prove an *alibi* and to swear to the truth of a statement made by one Joomun Sirdar exculpatory of the prisoner Luleet Koomar Roy. This new matter might have been pleaded by the prisoner himself before the magistrate and the sessions judge. It might also have been urged by prisoner's counsel Messrs. Peterson and Waller, who defended him, when the trial was pending before the judges in this court, where it will be seen that no attempt to prove *alibi* was made. The arguments then used will be found on the record.

"The prisoner has been convicted, not only by the sessions court, but also by three judges of this court, of the murder with which he is charged, after a most careful consideration of all the evidence adduced for the prosecution and for the defence, and after weighing every circumstance that the court itself could discover, or the prisoner's counsel elicit from the papers on the record.

"The very early inquiry instituted by the police, which commenced at daylight of the 8th October (the murder having been committed on the night of the 7th,) left no time nor opportunity for a conspiracy, as pleaded by the prisoner. Several persons, amongst them two purohits, were then examined on the spot. Their statements all concurred in bringing home the murder to the prisoner, who, when searched for, could not be found, and was reported by those present to have absconded with all his family.

"The evidence against the prisoner has been clear and consistent from the beginning. That in support of the prisoner's chief plea in defence, *alibi*, has been discredited throughout the trial.

"The court have already heard and disposed of Joomun Sirdar's petition, which they hold to be devoid of all foundation in fact, with reference to the satisfactory proofs of the prisoner Luleet Koomar Roy's guilt to be found on the record, and the very insufficient and inconsistent defence which he has set up. They deem it, therefore, unnecessary to proceed further in the matter of the allegations contained in his petition, which has been already rejected, for the reasons recorded thereon.

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April 28.

Case of LULEET KOOMAR ROY and another.

"On the subject of the petition now before the court, they have to note that after the full and searching investigation which this case has gone through in its various stages, up to the present time, they find no ground for staying the execution of the sentence, which they considered it to be their painful duty to pass on the prisoner Luleet Koomar Roy; and they direct that the sessions judge be ordered to carry out that sentence under the warrant which issued on the 28th April 1852."

PRESENT:

A. J. M. MILLS., ESQ., *Officiating Judge.*

KOODRUTOOLLAH

versus

KOODRUTOOLLAH (No. 4) AND SHUREEUTOOLLAH (No. 5).

1852.

April 29.

Case of KOODRUTOOLLAH and another.

The sentence passed by the sessions judge, upon the prisoners convicted of culpable homicide, being thought too severe under the circumstances, they were released.

CRIME CHARGED.—No. 4, culpable homicide of Shureeutoollah, by beating him with a bamboo stick, from the effects of which he immediately died. No. 5, 1st count, aiding and abetting in the above crime, and 2nd count, beating the said Shureeutoollah.

CRIME ESTABLISHED.—No. 4, culpable homicide of Shureeutoollah, son of Monaoollah, and No. 5, aiding and abetting in the culpable homicide of Shureeutoollah, son of Monaoollah.

Committing Officer, Mr. T. B. Mactier, joint magistrate of Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 2nd February 1852.

Remarks by the sessions judge.—"The prisoner No. 4 is charged with culpable homicide of Shureeutoollah. The prisoner No. 5 with aiding and abetting the same, and on 2nd count, with beating deceased. It appears that a few days before the occurrence, a dispute occurred between the prisoners and this prosecutor and his brother (deceased), regarding the destruction of his crops by the prisoner's cattle, and high words passed between them. That on the 31st of October, a few days after the quarrel, deceased was returning home from his field and happened to pass near the prisoners' houses when they set upon him and severely assaulted him, from the effects of which he died on the spot. The assault and consequent immediate death are fully proved by the evidence of the eye-witnesses, and it is shown by the deposition of the sub-assistant surgeon that the cause of death was a blow inflicted on deceased's left side by a *lattee*, or some such weapon, which ruptured his spleen, he further deposes to the spleen having been enlarged and diseased for some time previous. The prisoners in their defence, though admitting the assault, urge that the deceased received his death blow from the witness Husseemooddeen. They also plead that deceased had

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Case of Koodrutool-lah and another.

seized hold of their sister and attempted to abuse her, but these pleas are not supported to the satisfaction of this court. It is proved by the evidence that the blow, which caused the death of Shureeutoollah, was inflicted by the prisoner No. 4. The *futwa* of the law officer convicts prisoner No. 4 of culpable homicide, and the prisoner No. 5 of aiding and abetting in the same, and in concurrence with this finding, they have been sentenced respectively as described in column 12 of this statement."

Sentence passed by the lower court.—No. 4, five (5) years' imprisonment with labor and irons, and No. 5, four (4) years' imprisonment without irons, and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I am not satisfied that the assault originated with the prisoners setting upon the deceased, as he was passing by their houses, and am inclined to think it was the consequence of an insulting act committed by the deceased. The prisoners, however, admit that they pursued the deceased, and assaulted him, pleading at the same time that the death-blow was accidentally given by one of the witnesses in striking at them. I cannot credit the evidence adduced to support this plea. The night was dark, and if the two witnesses really saw the attack, which I much doubt, it is out of the bounds of probability to conceive that they could, at the distance they were off, distinguish where the blows alighted. I uphold the conviction; but consider the punishment is, under the circumstances shown in the record, too severe. The blow was inflicted with a small stick in the heat of a quarrel, and might not have caused death, had not the spleen of the deceased been enlarged and diseased. I sentence the prisoner Koodrutoollah to be imprisoned for one (1) year, and Shureeutoollah for six (6) months, the former to pay a fine of rupees fifty (50), and the latter of rupees thirty (30), and, in default of payment, to labor until the fine be paid or the sentence expire."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

KORESH MAHOMED (No. 1), KORESH MAHOMED (No. 2) AND TENAI CHOWKEEDAR (No. 3).

1852.

April 30.

Case of KORESH MAHOMED and others.

Sentence of five and three years' imprisonment for burglary confirmed on appeal; the pleas urged not being borne out by the record.

CRIME CHARGED.—1st count, burglary and theft of property to the value of Company's rupees 12-1-0, committed in the house of Junmojoy Chuckerbuttee; and 2nd count, receiving and possessing a portion of the property, knowing it to have been acquired by burglary and theft.

CRIME ESTABLISHED.—Burglary and theft of property to the value of Company's rupees 12.

Committing Officer, Mr. T. B. Mactier, joint magistrate of Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of zillah Dacca, on the 2nd February 1852.

Remarks by the sessions judge.—"The circumstances of this case are as follows:—On the night of the 2nd August last, the prosecutor (since dead) had occasion to go outside of his house, when he heard people moving about in his cooking-house. He gave alarm and Bishennath, Kulleemoodeen and others, who are eye-witnesses in the case, came to his assistance and captured the prisoners Nos. 1 and 2, inside the house, and No. 3, as he was escaping from the entrance which had been cut by them into the house. The prisoners deny the charge, but have set up no good defence, and the witnesses called by them say nothing in their behalf. The prisoner No. 3 is the chowkeedar of the village in which the burglary was committed, and hence the reason for sending this case up to the sessions court. In concurrence with the *futwa*, which convicts the prisoners of burglary, they have been sentenced respectively as described in column 12 of this statement."

Sentence passed by the lower court.—Nos. 1 and 2, each three (3) years' imprisonment with labor and irons, and No. 3, five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The two Koreshes appeal, urging the same pleas as they did in their defence on trial, *viz.*, that the prosecutor's cattle damaged their crops, and that they caused prosecutor to be fined by the zemindar; in revenge for which prosecutor caught them at their own houses and has suborned witnesses to prove that they were seized in the act of stealing. I observe

that they cited witnesses to this effect in the courts below, and that they, (the witnesses,) were examined. Instead, however, of proving this plea, they gave hearsay evidence corroborative of the case for the prosecution. The prisoner Tenai has given at different stages different versions of his capture, none of which is satisfactory. The appeal of all the prisoners is rejected."

1852. April 30. Case of Koresh Mahomed and others.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

BATOOL, ON BEHALF OF RANEE BISSESSERY,

versus

JAKIR JEMADAR.

1852. April 30. Case of Jakir Jemadar.

Conviction on evidence of witnesses pronounced by Nizamut Adawlut, on the previous appeal of another prisoner in the same case, to be unworthy of credit, annulled.

Crime Charged.—Arson.

Crime Established.—Arson.

Committing Officer, Mr. A. G. Macdonald, magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 12th November 1851.

Remarks by the sessions judge.—"This is the same case as that in which Gooroodyal Singh was committed, tried and convicted, on the 12th November last. The prisoner Jakir was an accomplice in that charge. The remarks on Gooroodyal's case were these:—

"From the statement of the prosecutor (a servant of Ranee Bissessery, whose newly-constructed thatched house near her *komat*, was burnt to the ground,) it appears that, owing to apparent animosity on the part of Mukrund Deb Rykut (in possession, on the result of a summary suit, of the estate of Bykuntpore) towards Ranee Bissessery, mother of the minor Rajrajender, who, through his guardian, had instituted a regular suit to determine the right of succession to this estate (in whose favor a decree has lately been given), and with a view, apparently, that the ranee with her children should not reside in this house, which was at no great distance from his own dwelling, the prisoner, a principal jemadar in the employ of Mukrund, with another dependent named Jakir (not yet apprehended) accompanied by thirty or forty persons, proceeded, on a Tuesday night, in Magh last, to the newly-thatched house of the ranee, adjacent to her *komat* or granary, and deliberately set fire to the roof on the eastern side of the compartment of the dwelling, the door of which faced the south, while Jakir set fire to the northern part of it, by which (fire) this and five other compartments of the dwelling were burnt to the ground, the relatives of the ranee having previously vacated the premises.

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Case of JAKIR JEMADAR.

"The prisoner resorted to *alibi*, which the evidence he called could not prove.

"The *futwa* found the prisoner guilty of the first count, and considered him liable to punishment by *akoobut*, in which finding I concurred.

"In this case the prosecutor (a servant of the ranee, whose komat was burnt,) having absconded, the magistrate appointed a vakeel on the part of Government to prosecute the case, from whose statement and the evidence adduced on the trial, it was clearly proved that the prisoner Jakir had, during the day, been seen to set fire to the northern part of the compartment, the door of which faced the south, and afterwards to have caused the site of the building to be ploughed up that it might not be distinguished.

"The prisoner denied the charge; stated that he had never gone to the komat on the day of the event; that he had not been a servant of Mukrund; that he had always been at home from Aghun (preceding.) His witnesses support him in his pleas, save that they did not know the date of the occurrence nor even the month in which it took place. It was fully established on the part of the prosecution that the prisoner had been a jemadar of Mukrund Deb, the zemindar, and was a most oppressive person in the collection of rent and in beating and seizing the *ryots*.

"The *futwa* found the prisoner guilty, punishable by *tazeer*; in which finding I concurred."

Sentence of the lower court.—Five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner in this case, Jakir, has been convicted on the depositions of the witnesses, whose evidence, taken at the original trial, when Gooroodyal* was convicted by the sessions judge, was pronounced by this court to be entirely unworthy of credit.

"The conviction of this prisoner cannot be sustained on such evidence. It is annulled."

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* See Nizamut Reports for March, p. 363.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GORAI NEEKURIE

versus

KULLEEMUDDEEN.

1852. April 30. Case of KULLEEMUDDEEN. Sentence of five years' imprisonment for burglary, confirmed on appeal.

CRIME CHARGED.—1st count, burglariously entering the house of Gorai Neekurie, the prosecutor, and stealing therefrom property belonging to the prosecutor, valued at rupees 2-13-9; and 2nd count, receiving and possessing property obtained in the aforesaid burglary, knowing it to have been so acquired.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer, Mr. T. B. Mactier, joint magistrate of Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 4th February 1852.

Remarks by the sessions judge.—"The prisoner is charged with burglary and theft of property to the amount value of rupees 2-13-9. He was captured on the spot by the chowkeedar, who was going his rounds with the eye-witnesses Koodrutoollah and others, entered in the calendar. He confesses before the police and joint magistrate, and these confessions have been duly attested before this court. The fact of the burglary having been committed, and the recovery of a small quantity of property outside prosecutor's house, have also been proved. The prisoner now denies the charge and retracts his former confessions, but he has set up no good defence; and the witnesses called by him to speak to his character, declare that they know nothing about him. He is an old offender, having been previously convicted and imprisoned for six (6) months in a case of burglary, and in concurrence with the *futwa* of the law officer has now been sentenced to five (5) years' imprisonment with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner in his appeal complains that his defence at the sessions was not attended to. It was to the effect that the chowkeedar, who apprehended him and other prisoners, has a spite against him. He tendered no evidence to this point. He has been convicted on the completest possible proof, and his appeal is rejected."

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

CHUNDOO MAHOOREE

versus

GUNDOWREE (No. 1), BHUTTUN ROY (No. 2), JHUMMUN ROY (No. 3), HEERAH ROY (No. 4), HEERAH ROY 2ND, (No. 5), BESSOO (No. 6), BUDDUN GOALAH (No. 7), MOHUN ROY (No. 8), DEELAH ROY (No. 9), OODUT ROY (No. 10), JOAGRAUJ SINGH* (No. 11), TOORUN SINGH (No. 12), GOORDEE, ALIAS GOORDYAL* (No. 13), JEETUN CHOWKEEDAR (No. 14) AND BUDDHOO PASSEE (No. 15).

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Case of GUNDOWREE and others.

The prisoners sentenced were convicted of having in their possession plundered property knowing it to be so.

CRIME CHARGED..—1st count, Nos. 1 to 15, dacoity of property valued at rupees 2,503-6-9, and wounding and assaulting Moosheree, nephew of the prosecutor; 2nd count, Nos. 1 to 12, having in their possession dacoity property, knowing at the time the same to have been obtained by dacoity.

CRIME ESTABLISHED.—Nos. 1 to 4, 8, 14 and 15, dacoity of property valued at rupees 2,503-6-9, and wounding and assaulting Moosheree, nephew of the prosecutor. Nos. 5 to 7, 9, 10 and 12, having in their possession dacoity property, knowing at the time the same to have been obtained by dacoity.

Committing Officer, Mr. G. G. Balfour, magistrate of Monghyr, Bhaugulpore.

Tried before Mr. F. Lowth, officiating sessions judge of Bhaugulpore, on the 19th January 1852.

Remarks by the officiating sessions judge.—" The prisoners pleaded 'not guilty,' to the charges preferred against them.

" At the time of the occurrence of this dacoity, namely, towards midnight of the 21st Bhadoon 1259, or 1st September 1851, the prosecutor was absent from home, having gone to the village Burbeegah, three *coss* off, to attend some festival. Two of his servants, however, came to him and informed him of it, representing his nephew, Moosheree, witness No. 1, to have been seriously maltreated, and all his property carried off by the dacoits. He immediately repaired to the police *phandee* at Burbeegah and gave information; but no notice was taken of the matter until two days after, when the darogah of Sheikhpoorah arrived and apprehended the prisoners, whom his nephew declared himself to have identified on the night in question, by the light of the torches used on the occasion. The prosecutor deposed also to his finding, on his return home, early on the morning after the occurrence, the door of his house smashed,

* Acquitted by the lower court.

his boxes broken open, and property to the amount of rupees 2,503-6-9, including rupees 650 in cash carried off, and his nephew suffering from the maltreatment he had received. Several portions of the door, lid of the chest, and broken lock and hinges were produced in court.

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"Various articles of wearing apparel, some brass utensils, and other things, numbered from 2 to 49, were received from the prisoners Nos. 1 to 13, which the prosecutor claimed as a portion of the property plundered.

"Moosheree, witness No. 1, stated, that he was lying awake on a bed in the verandah of a house, a few yards' distant from the prosecutor's shop, when suddenly some hundred men, armed with all sorts of weapons, and having three lighted torches, approached and began beating him, whilst two of the gang held him by the hair of the head. They first advanced towards the door of the house near which he was lying; but on some of the gang calling out that no property was to be found there, and that the prosecutor's shop was the place to be attacked, and where they would find something to re-pay them for their trouble, they dragged the witness there, and desired him to point out the property. On his refusing to do so, they further maltreated him, broke open the door, splitting it as well as the lid of the chest inside the shop into sundry pieces, and, taking all the property they could lay hands on, decamped. He, however, recognized all the prisoners except Goordee, No. 13, by the light of the torches. This witness showed the marks of several blows from *lattees* on his back, arms and legs.

"Bhowanee, witness No. 2, corroborated the above, and showed a slight scar of a wound from a *lattee* on his right hand; he also recognized the prisoners Nos. 1, 2, 3, 4 and 14, and declared the property produced in court to belong to the prosecutor.

"Torull Singh, witness No. 3, supported the prosecutor's statement of facts, and identified the prisoners Nos. 2, 3 and 15, as having been of the gang.

"Doolah Goraiet, witness No. 4, recognized the prisoners Nos. 1, 4, 14 and 15; whilst Daood Alee, witness No. 5, swore to the prisoners Nos. 1, 2, 3, 14 and 15, being present on the occasion. Toofanee, witness No. 6, deposed to his having recognized the prisoners Nos. 1 and 14. Horill, witness No. 7, identified prisoners Nos. 1, 3, 8, 12, 14 and 15; and Pooran, witness No. 8, pointed out the prisoners Nos. 1, 2, 3, 4 and 14, as of the marauding party. All these witnesses moreover swore to the articles produced being the property of the prosecutor.

"Several other witnesses also deposed to the dacoity having occurred, to their hearing the uproar at the prosecutor's shop,

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seeing the broken condition of the door and lid of the chest, and the wounded state of the witness No. 1.

"The *sooruthal*, drawn up by the darogah on the 3rd September 1851, showing the outer door of the prosecutor's shop and lid of the chest to have been smashed, and bearing marks of several heavy blows, whilst the lock and hinges of the same were broken, and witness No. 1 to have received no less than twenty-four blows on his hands, arms, leg, back, shoulders, and over the right ear, apparently from *luttees*, was duly read over and attested by the subscribing witnesses.

"Of the property recovered, several articles, from Nos. 2 to 48, were found in or close to the houses of the prisoners Nos. 1 and 5, (who are brothers and live together, Nos. 2 and 10, also brothers, and occupying the same house, Nos. 8 and 3, father and son, and similarly domiciled, Nos. 4 and 9, also brothers and residing together, Nos. 12 and 11, father and son, similarly circumstanced,) and Nos. 6 and 7, and were duly identified as portions of the property stolen. A pair of silver anklets, No. 49 was found on the person of the son of prisoner No. 13, but sufficient proof was not adduced in support of the prosecutor's claim thereto.

"Before the police darogah on the 3rd September 1851, the prisoner No. 1 admitted his knowledge of the occurrence of the dacoity, and named the prisoners Nos. 2, 3, 4 and 15, as having been of the party; but denied having had any share himself in its perpetration, urging that he was keeping watch on the occasion on a *machan* in a neighbouring field, and when the party returned they gave him some property, which he concealed in a straw heap. He also offered to point out where other portions of the property had been deposited. On the partial confession of this prisoner, therefore, and his pointing out the places of concealment, the property produced in court was recovered. Three witnesses, before whom this confession was recorded at the thanna, also deposed to its having been voluntarily made, and to the recovery of the property in consequence.

"Gundowree, No. 1, denied all knowledge of the matter: declared his house to have been searched after night-fall and during his absence, and pleaded that he neither made any confession, though great oppression had been used to force him to do so, nor pointed out the property, and cited witnesses to speak to his character.

"Bhuttun Roy, No. 2, Jhummun Roy, No. 3, Heerah Roy, No. 4, Deelah Roy, No. 9 and Joagrauj Singh, No. 11, pleaded *alibis*, and with the exception of No. 4, cited witnesses to prove the same. They further urged that no property was found in their possession, No. 2 also pleading that he lived separate from his brother Oodut, No. 10.

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"Heerah Roy, No. 5, cited some witnesses to speak to his character, pleading that he was at home on the night of the occurrence.

"Bessoo, No. 6 and Buddun Chowkeedar, No. 7, declared the property found in their possession to be their own; the former citing witnesses to prove the same, whilst the latter urged that he was on duty in Sugawah on the night of the occurrence, but called no witnesses.

"Mohun Roy, No. 8, represented himself to be the most respectable man in the village Sugawah, and altogether ignorant of the dacoity, and pleaded that no property was found in his house, that he lived separate from his son Jhummun, No. 3, and cited witness to character.

"Oodut Roy, No. 10, pleaded that he lived separate from his brother, No. 2, and called witnesses to speak to his character.

"Toorun Singh, No. 12, entered into a long detail relative to his dealings with the prosecutor's partner in business altogether unnecessary to recapitulate; declared the property found in his house to be his own, and cited witnesses to speak to his character.

"Goordee, No. 13, declared the *anklets* found on his child to be his property, and cited witnesses to prove the same; pleading also the extreme improbability of his allowing them to be exposed on the person of his child, had they been obtained by dacoity only a few days previous.

"Jeetun, No. 14, pleaded that he had held the responsible post of chowkeedar of the village Moharat for eight or nine years, which would not have been allowed had he been a dacoit; that the darogah desired him to trace out the guilty parties, and because he failed, this charge was brought against him; that his house was searched, but no property found, and cited witnesses to speak to his character.

"Buddhoo Passee, No. 15, entered no defence; but simply denied the charge, and cited witnesses to character.

"Though some few of the witnesses cited by the prisoners spoke in favor of their character, yet the generality pleaded ignorance of the facts to which they were called on to depose. The evidence on the side of the prosecutor against Joagrauj Singh, No. 11, and Goordee, No. 13, being weak, these prisoners were considered entitled to all the benefits arising therefrom.

"The jury returned a verdict of guilty against all the prisoners except Goordee, whom they acquitted, convicting Nos. 1, 2, 3, 4 and 8, on both counts; Nos. 14 and 15 on the first count only, and Nos. 5, 6, 7, 9, 10, 11 and 12, on the second count; in which finding, excepting as far as related to prisoner No. 11, I fully concurred. The prisoners, Jeetun, No. 14, and Bhuddun, No. 7, being chowkeedars, Buddhoo Passee having been before

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sentenced to three years' imprisonment in a case of theft, and Gundowree, No. 1, being clearly the leader in the whole affair, enhanced punishment was awarded them."

Sentence passed by the lower court.—Nos. 1 and 15, each twelve (12) years' imprisonment with labor and irons; No. 14, fourteen (14) years' imprisonment with labor and irons; Nos. 2, 3, 4 and 8, each ten (10) years' imprisonment, with labor and irons; No. 7, eight (8) years' imprisonment with labor and irons, and Nos. 5, 6, 9, 10 and 12, each seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"This is a charge of dacoity against fifteen persons, two of whom have been acquitted by the sessions judge. There seems to be no doubt that a dacoity was committed in the prosecutor's house during his absence, and that one of the witnesses, Moosheree, a nephew of prosecutor, was severely beaten. Several witnesses speak to the house being broken open; but those who saw the robbers departing did not see that they carried any bundles with them. The occurrence was on the 1st September. On some suspicion the house of Gundowree Roy, prisoner No. 1, was searched, and he was examined. This examination took place on the 3rd September, and though it is not a confession strictly speaking of the crime of dacoity, it admits a privity to it, and receiving some property. Gundowree mentioned the names of several persons engaged in the dacoity; and their houses were searched. The depositions of the witnesses, in which they swear they recognized several of the prisoners, were not taken till the 5th, after their names had been mentioned by Gundowree: in fact, there is no mention of any one being recognized till then; forty-nine pieces of property of various kinds were found in the houses searched, to which prosecutor lays claim. His list of property bears the date of 3rd September, and includes the articles found; one pair of bangles found on the ankles of a child of the prisoner Goordee, was claimed by prosecutor; but the prisoner's claim was considered the better of the two, and he was acquitted by the sessions judge.

"The most important witness is Moosheree, who swears to having recognized all the thirteen prisoners now on trial before me; but at the thanna he only mentioned the names of Gundowree, No. 1, Jhummun, No. 3, Jeetun, No. 14, and Buddhoo, No. 15, as having been recognized by him at the time. The whole party of prisoners are his neighbours, so that if he did recognize them at the time, he would probably have said so at once to the police with a view to their apprehension; but this man has raised his number of recognitions each time he was examined. At the thanna he recognized four, before the magistrate eleven, and at the sessions thirteen. The result is,

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that the evidence is not to be credited as regards any but the four prisoners first stated to be recognized; and it is not to be relied on solely and without support as regards even these. These were not mentioned until first named by the prisoner Gundowree. This witness swears to all the property; forty-nine articles being prosecutor's, the bangles among the rest.

Witness Bhowanee in his sessions deposition said, he recognized Gundowree, No. 1, Jhummun, No. 3, Heerah Roy, No. 4, and Jeetun, No. 14, as present at the dacoity; but in his thanna deposition he recognized no one. He swears to all the forty-nine articles of property, especially the bangles; he also says that the dacoits had smeared their faces with earth; but, as it is observed this must have prevented their recognition, he adds that the perspiration had washed it off again; in which case, it is not easy to understand how he should have seen it at all.

"Witness Toorum recognizes Jhummun, No. 3, Bhuttun No. 2, Jeetun, No. 4 and Buddhoo, No. 15. In his thanna deposition he recognized also Gundowree, No. 1, but denies it at the sessions. He describes the dacoits as having their heads tied up *mohreta*, or with clothes round the upper part of their heads, while the former witnesses said they had *puttees*, or clothes coming down the sides of the face and under the chin. These two ways of dressing the head are well known and quite different from each other. This man recognizes the bangles as prosecutor's.

"Doolah recognizes Gundowree, No. 1, Heerah Roy, No. 4, Jeetun, No. 14 and Buddhoo, No. 15. He also recognizes all the property from Nos. 1 to 49; though it seems strange that a man of his description should have had such frequent access to the property as to recognize it, for the prosecutor is a man of much superior station in life.

"Daood Alee recognized Gundowree, No. 1, Bhuttun, No. 2 and Jeetun, No. 14; at the thanna he swore to five persons.

"Toofanee recognized Gundowree, No. 1 and Jeetun, No. 14, as well as the whole of the property,—49 articles.

"Horil recognized Gundowree, No. 1, Mohun Roy, No. 8, Jhummun, No. 3, Toorun Singh, No. 12, Jeetun No. 14, Buddhoo, No. 15; but the thanna deposition of this man is, though taken, not with the record.

"Toorun recognized Gundowree, No. 1, Bhuttun, No. 2, Heera Roy, No. 4, Jeetun, No. 14, Jhummun, No. 3; but his thanna deposition, though in the list, is missing.

"I have no faith in any of these recognitions. They are in themselves inconsistent, and were not made known until Gundowree's statement had prompted them. It is not as if the persons recognized were seen for the first time. They were well known to the witnesses by name; and had they been recog-

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nized at the robbery, their names would have been mentioned immediately.

"There remains the recognition of property to deal with. There are forty-nine articles of property produced. To the whole of these the prosecutor swears as his own, and several witnesses support him in this. One article, No. 49, a pair of bangles, has been given up by the sessions judge, who rejects the evidence to the recognition as opposed to other evidence on the part of the prosecution; but the forty-eight articles were found in seven different houses, in which eleven of the prisoners are declared to live. In some instances the search was made in their absence; but this does not invalidate the proceedings. The evidence to the finding and recognition of the property is less conclusive as regards some of the prisoners than as regards others.

"I convict the prisoners Bhuttun, No. 2, Oodut, No. 10, Jhummun, No. 3, Mohun, No. 8, Heerah, No. 4, Deelah, No. 9, Gundowree, No. 1, Heerah, No. 5, in whose houses the property was found, of the crime of having in their possession plundered property knowing it to be so, and sentence them to seven (7) years' imprisonment with labor and irons. I acquit the prisoners Bessoo, No. 6, Buddun, No. 7, Toorun, No. 12, Jeetun, No. 14 and Buddhoo, No. 15, against whom the evidence is weak and direct their immediate release."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

MANRAUJ CHOWDHUR.

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The false swearing of the prisoner, in this case, was not held to amount to penal perjury.

CRIME CHARGED.—Perjury, in having, on the 16th and again on the 17th February 1852, deposed, under a solemn declaration taken instead of an oath, before the joint magistrate of Chumparun, that he was not present when the darogah of Shewur drew out the plan of the ground which was decreed to belong to the village of Busunt, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer, Mr. R. H. Russell, joint magistrate of Chumparun, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 22nd March.

Remarks by the sessions judge.—" I refer this case, because I dissent with the moulvee, who acquits the prisoner, whereas it appears to me that he has knowingly perjured himself in declaring on two different occasions, on oath, that he had not been present when a certain local inquiry was held, whereas it is fully and clearly proved that he was so.

" This case arose out of certain proceedings held under the provisions of Act IV. of 1840, between the *maliks* of two mouzas, named Busunt and Manearee, in which, after local inquiry had been made, a decree was given for the farmer. This year again the Busunt people complained that their opponents were interfering with the lands thus awarded to them, and the joint magistrate in the course of the proceedings deeming it necessary to call for the evidence of those who had witnessed the plan, &c., first made, amongst others, sent for the prisoner, who, however, both on the 16th and 17th of February, swore that he had not been present, though when all the other witnesses had deposed that he was there, and he was called upon to explain his denial, he admitted to that officer that he had been there; but pleaded that he was frightened, when he was examined, and that he had been misled from not seeing his signature to the plan.

" On his trial before me, he admits having been present with many other persons, but says that he does not know when the plan was drawn or who wrote his name, &c., upon it, and he totally denies the confession, and declares that he does not recollect having been present as a witness at all. The moulvee

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being of opinion that it is doubtful whether he was not misled by not seeing his name in his own handwriting, and also doubting the fact of his having been there when the plan was completed, considers him entitled to an acquittal.

"In this finding, however, I do not agree with him, as it is certain that the prisoner, on two different occasions, fairly denied having been present at all, and made no excuse of want of recollection; and as it is in my opinion clearly and satisfactorily proved that he was there (though he did not with his own hand write his name,) I cannot but think that he has knowingly and deliberately perjured himself in saying that he was not present. Under these circumstances, it becomes my duty to refer the case for the orders of your court, and in so doing I would suggest (in the event of their coinciding with me) that the prisoner Manrauj be imprisoned for the offence for one (1) year from the date on which (March 23rd) the trial was concluded."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—" I agree with the law officer. As the prisoner's name, which appeared on the plan as one of the witnesses, was not in his handwriting he may have doubted whether he was present at the time the plan was drawn. He was not cited as a witness by either of the parties to the Act IV. case; and as he does not appear to have been actuated by any malicious or fraudulent intent in denying that he was present, I am of opinion the false swearing does not amount to perjury as defined in Clause 1, Section IV. Regulation II. of 1807. I acquit the prisoner, and direct his release."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

A. J. M. MILLS, ESQ., *Officiating Judge.*

NITTO GOPAL MOOKERJEA

versus

JHUROO SHEIKH (No. 1), MADAREE MUNDUL (No. 2), GOBURDHUN SHEIKH (No. 3), KALACHAND SHEIKH (No. 4), KALACHAND SHEIKH DERIAH (No. 5), TEENCOWREE SHEIKH (No. 6), KULLUM SHEIKH (No. 7) AND BUDDUN DOOLEAH (No. 8).

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The prisoners Jhuroo Sheikh, Madaree and others, in all ten, were charged with dacoity, attended with murder and wounding. Two of the number were released by the sessions judge, who recommended a sentence of imprisonment for life, in transportation against the remaining prisoners.

CRIME CHARGED.—Dacoity in the house of the prosecutor, in which Premchand Mookerjea, the brother of the prosecutor, was murdered, and the prosecutor and his nephew, Kalee Prosonno Mookerjea, severely wounded, and property to the amount of Company's rupees 3,545-5-0 plundered.

Committing Officer, Mr. A. Hope, assistant magistrate, exercising the powers of joint magistrate, Santipore, Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 24th January 1852.

Remarks by the sessions judge.—"Having convicted the eight prisoners of the crime of dacoity, attended with highly culpable homicide (amounting almost to wilful murder) and severe wounding as defined in Section I. Act XXIV. of 1843, I have passed on them the sentence prescribed by law for the offence, namely, to be transported beyond sea for life; and as directed in Section IV. Regulation VIII. of 1808, submit my proceedings held on the trial, together with the record of the case in the foujdaree court, for the confirmation of the sentence by the superior court.

The court, with reference to the provisions of Clause 1, Section IV., Regulation LIII. of 1803, sentenced the prisoner No. 2, Madaree Mundul, to death, and upheld so much of the sessions judge's recommendation as awarded imprisonment for life against the other prisoners, save with regard to Kalachand Sheikh, son of Shookor Biswas, prisoner No 5, against whom they were of opinion, the charge was not satisfactorily established, and therefore, acquitted him.

They remarked that the sessions judge's first letter of reference did not contain a brief re-capitulation of the circumstances of the case, and of the evidence adduced. They further observed, that the sessions judge, convicted the prisoners of 'dacoity attended with highly-culpable homicide, amounting almost to wilful murder;' he should, therefore, have stated the peculiar circumstances which in his opinion reduced the crime of murder in the prosecution of dacoity to culpable homicide, and the case was returned to the sessions judge who was desired to furnish a full and complete report.

Under the above orders a second report, dated the 11th March 1852, was submitted and laid before two judges (Mr Mills and Sir R. Barlow, Bart., present,) when the case was finally disposed of as above indicated.

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"It is greatly to be regretted that, owing to the culpable delay of the police darogah in proceeding to the spot, when he first obtained intimation of the dacoity, his dilatoriness in making the preliminary investigation, and the absence of all exertion or endeavour on his part to seize the dacoits, and recover the plundered property, though both were within his grasp, he allowed several of the gang to escape with the booty. He had timely notice of the occurrence, and could, had he chosen, have secured the greater part, if not all, the offenders; on the contrary, he made unnecessary delays, which have the appearance of being intentional, and with the view of allowing the guilty to escape.

"The murder of Premchand Mookerjea was most wanton. He had his skull fractured, and was otherwise wounded, and from the circumstance of his having passed blood copiously before death (for he lived for a few hours) it is very probable that his assailants injured his intestines by pressure or blows.

"The prosecutor was very anxious to implicate a neighbour of his, named Omesh Chunder Bonnerjee, as being the instigator of the attack, and as being present at it, owing to enmity and ill-will previously existing between them. He swore that he had seen him and had recognized him by the light of the *mussals;* and four of the eye-witnesses, Nos. 1, 3, 4 and 5, also swore to his being present and giving orders; but as No. 1 was the prosecutor's nephew, and the others are his dependents, their evidence could only be taken with much caution. The accused pleaded an *alibi*, which was satisfactorily proved by the evidence of eight respectable and credible witnesses, who are neighbours of his, and who have all deposed to having seen him standing at the entrance of his own door, a distance of seven or eight *russees* or about three hundred yards distant from the place where the dacoity was committed. He has, therefore, been acquitted by me.

"Another prisoner (No. 10 of the calendar,) named Bheem Bagdee, was only sworn to by the prosecutor, not by name, but appearance, and when he was afterwards apprehended he recognized him. This man, it appears by the assistant magistrate's proceeding, dated the 6th of November last, was confined in the *hajut tujveez*, and under examination, being a person of notorious bad character. He offered his assistance to the police in tracing another dacoity, on condition that he got his release. This he obtained and went off, no doubt to join in this dacoity, which had most probably been pre-concerted, for he was seen after the occurrence at no great distance from the place, concealed in a village about half a mile from that in which his own house is, having a severe wound on his hand. He obtained some liquor and was conveyed in a *doolee* to Raneegunge, on the banks of the Bhageerutty, whence he must have proceeded to

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Calcutta by water, for he was found secreted in the house of a Brahmin at or near Kalee Ghaut, who at first denied that Bheem Bagdee was there, but there he was afterwards found and seized.

"Had this man not been implicated in the dacoity there would have been no occasion for his avoiding his own village, going concealed in a *dooly* to the river-side, and ultimately being seized at Kalee Ghaut secreted in a Brahmin's house. By the public newspapers, the fact of his having been concealed there is notorious, and what plea a Brahmin at Kalee Ghaut could have for denying that so low caste a man as a Bagdee, resident of another zillah, who had a severe wound on his hand, was secreted in his house, while he denied the fact, remains for him to prove.

"Bheem Bagdee not being able to account for the wound on his hand, or to exculpate himself from suspicion, and being a man of noted and notorious bad character, as proved by the foujdaree record, I have ordered, under the provisions of Section X. Regulation VIII. of 1818, that he is to furnish two securities for rupees 200 each, for his future conduct for three years, or to be confined with labor in irons for that period, and should he not have furnished the required securities by that time he is to be brought up before this court, to have orders passed upon his case.

"The eight prisoners I have convicted and sentenced as above-mentioned are all notorious bad characters, as the evidence of the witnesses to their character under that head of the calendar and the report of the foujdaree record-keeper, which is with the magistrate's proceedings, will show. Of them Madaree Mundul, prisoner No. 2, is the worst, and is described as being a sirdar dacoit.

"Amongst other proof adduced by the assistant magistrate at Santipore, to implicate Madaree Mundul, he entered in the calendar the names of persons who had seen the son and brother of the prisoner No. 2, searching in a tank for something, and which afterwards proved to be a large brass water jar, identified as belonging to the prosecutor; but as it was not proved that Madaree Mundul had placed it there, nor that it was part of the plundered property, those witnesses were not examined.

"I see no reason for recommending any mitigation of the sentence passed upon the prisoners according to law, for the offence of which they have been convicted."

Resolution of the Nizamut Adawlut.—No. 211, dated 20th February 1852.—(Present: Mr. A. J. M. Mills.)—"The court, having perused the papers above recorded, connected with the trial of Jhuroo Sheikh and others, observe that the sessions judge has omitted to record his reasons for convicting the pri-

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soners; his letter should contain a brief recapitulation of the circumstances of the case, and of the evidence adduced in support of the charge and of the defence. The prisoners are convicted of dacoity attended with highly-culpable homicide, amounting almost to *wilful murder*. The sessions judge should have stated the peculiar circumstances, which, in his opinion, extenuated murder, in the prosecution of dacoity, to homicide. If death is occasioned by the hand of a party engaged in committing a felony, it is murder, even if it ensue against the intention of the party. The case is one of much atrocity, and the sessions judge should state why sentence of death should not be passed upon those, who, on the facts shown by the record generally, appear to have been the leaders of the gang. The court direct that the proceedings be returned to the sessions judge, with instructious to furnish a full and complete report on the trial, noticing the points above-mentioned, and to re-submit the proceedings on as early a date as practicable."

To the above resolution the sessions judge made the following reply, No. 35, dated the 11th March 1852:—

"I have the honor to acknowledge the receipt of copy of a resolution of the Presidency Court of Nizamut Adawlut, under date the 20th ultimo, and to submit the further report called for.

"It appears from the statements made by the prosecutor and eye-witnesses, that on the night of the 15th of Kartick, corresponding with 31st of October last, the house of the prosecutor was attacked, between 11 and 12 o'clock, by a gang of about twenty-five or thirty men, some of whom clambered up on the roof of the house, and some ascended the stairs. All the prisoners who have been convicted by this court, were recognized by the prisoners and witnesses, during the attack, by the light of the torches which the dacoits carried. The prosecutor has sworn to recognizing all the prisoners; and in the margin is shown the number of witnesses who recognized each of them. Madaree Mundul is said by all to have been one of the sirdars, Bhubhoo Hajrah (died in jail) a second, and Omesh Chunder Banerjee, (acquitted,) the third.

Prisoners.	*Witnesses.*
No. 1, ...	Nos. 1 and 3.
„ 2, ...	All except No. 7.
„ 3, ...	Ditto.
„ 4, ...	Nos. 1 and 2.
„ 5, ...	„ 1 and 3.
„ 6, ...	„ 1, 2, and 3.
„ 7, ...	„ 1 and 3.
„ 8, ...	„ 1 and 3 to 7.

"Madaree Mundul and Bhubhoo with several others on going up stairs attacked the prosecutor and his nephew, Kalee Prosonno Mookerjea, (witness No. 1), and having broken open the door of the room in which Premchand was, they commenced maltreating him. He was heard to call out that Madaree Mundul

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and Bhubhoo were murdering him, and witness No. 1 swears, that he saw those two wounding Premchand with pikes. The prosecutor was wounded by Kalachand Sheikh (prisoner No. 4).

"Jhuroo Sheikh (prisoner No. 1) has confessed in the foujdaree court. His confession, which has been proved by the subscribing witnesses, is filed with the record of the trial. The prisoners, who do not live far from the prosecutor, are all men of notorious bad character.

"Before this court the prisoners all pleaded 'not guilty' and every one set up an *alibi*, but they have all most signally failed to prove them. Jhuroo Sheikh (prisoner No. 1), pleaded that he was asleep at home with two of his relations whom he called upon to give evidence in his favour. They both declared their ignorance of where he was at the time of the dacoity. Madaree Mundul (No. 2,) stated that he was listening to the *mersiah* (as it was the time of the *Mohurrum*) at the time of the dacoity. His witnesses could only speak to having seen him as long as the moon lasted, and after that they do not know what became of him. Goburdhun (No. 3,) called two witnesses to prove his *alibi*, one of whom swore he did not know him. Kalachand Sheikh (No. 4,) called two witnesses to prove his innocence, and they both said they knew nothing in his favour. Kalachand Sheikh (bearded), (No. 5,) said he was in his sugar-cane field when the dacoity occurred in the prosecutor's house. His witnesses say he was there till about 11 o'clock on the 14th or 15th of Kartick, but they are not certain of the date. Teencouree (No. 6,) declined having any witnesses examined on his behalf. Kullum Sheikh (No. 7,) named two persons to prove he was in his house when the dacoity took place, but from the darogah's report those witnesses are not to be found. They appeared, however, in the foujdaree, when one said that he sees the prisoner every evening till about 10 o'clock. The other said he was ignorant of anything in the prisoner's favour. Buddun Dooleah (No. 8,) stated in his defence that he was in his own house when the dacoity occurred. One of his witnesses says, he heard a report that he was seen going to his own *mohullah* in company with Ramdeen Chowkeedar, the other witness said he did not see him at all on the night in question.

"The whole of the defences set up by the above prisoners have, for want of proof, fallen to the ground, and I am of opinion that the whole of them, being convicted of dacoity attended with highly-culpable homicide and severe wounding, are liable to transportation beyond sea for life.

"I see no objection to a sentence of death being passed upon Madaree Mundul, the only leader who has been convicted, but it should, in my opinion, be commuted, because, though death ensued in the commission of the dacoity, I do not think it is

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proved that it was intended. Premchand died no doubt from the injuries he received, but it is not clear which of the prisoners was the immediate cause of his death.

"I am of opinion that, by the prisoners themselves, transportation beyond sea for life will be considered more severe than capital punishment; but it will have a more beneficial effect as an example in checking the crime of dacoity. To a superstitious ignorant Hindoo or Mahomedan the loss of life is trifling compared with loss of liberty in a foreign country, and I am certain that if the choice was given to the men convicted in this case, they would choose capital punishment to transportation for life. I hope this explanation of my reason for recommending the commuted sentence may be satisfactory."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow Bart., and Mr. A. J. M. Mills.)—Mr. A. J. M. Mills. "This is a case of dacoity attended with murder under very aggravating circumstances.

"The gang, consisting of about twenty-five or thirty armed men, first effected an entrance into the court-yard, some of the dacoits then climbed upon the terrace by applying bamboos close to the wall, and some ascended the stair-case and broke open the door leading into the inner apartments. The prosecutor, his nephew, witness No. 1, and the deceased, who were in the upper story of the house, behaved with much courage; the former first shut himself up in the side room, from the window of which he discharged arrows at the dacoits in the court-yard; driven from the window by the robbers, who threw bricks at him, he retreated into another room, the door of which he fastened. The dacoits forced this door open, but not before the prosecutor had wounded two of them with a *surkie*, or small spear, through an aperture in the door; he was then struck down senseless.

"The deceased and his nephew took refuge in another room, and did their utmost to keep the robbers at bay. The deceased wounded two of them in their attempt to break open the door; when this was effected they were both felled to the ground and the deceased died from the brutal treatment he received, before morning. He had his skull fractured in addition to other wounds and blows; and it is conjectured, from the circumstance of his having passed blood copiously before his death, that the dacoits stamped upon his stomach.

"The conviction of the prisoners, with the exception of No. 1, who confessed before Mr. Hope, assistant to the magistrate, on his arrival at the village, rests on the recognition of the eye-witnesses, for I regret to remark that owing to the dilatoriness of the police, which the sessions judge thinks was intentional, only one article of the plundered property was recovered; but after carefully sifting the evidence, and testing it with the statements given by the wit-

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nesses before the police and the assistant magistrate, I am of opinion it is of a character which is not met with in ordinary cases, and is such as to justify a belief in its credibility. It may be divided into three classes, which I shall notice separately, *viz.*, the evidence of the prosecutor and his nephew, who were in the upper apartment, the evidence of their servants, Komal Dooleah, No. 3, and Kanai Sheikh, No. 4, who were in the lower apartments, and the evidence of the neighbours, *viz.*, witnesses Nos. 2, 5, 6, 7, 8, who watched the movements of the robbers from the outside of the prosecutor's premises, which are enclosed by a puckah wall.

"The evidence of the prosecutor and his nephew is the most important. They are persons of respectability and substance. Their evidence is consistent and explicit. They were well acquainted with the persons of the prisoners; they had ample opportunities of observing them; they describe where they saw each prisoner, and the former swears distinctly to the identity of all the prisoners before the court, and the latter to all, but No. 5, and he adds that he saw a person resembling him. They admit that they were not on good terms with Omesh Chunder Bonnerjee, acquitted, Madaree, (No. 2,) and Bhubhoo deceased: indeed from the expressions which they swear that the prisoner Madaree and the two others gave utterance to, it would seem that revenge, as well as plunder, actuated them to commit this daring deed. It is not uncommon with natives to take this means of wreaking vengeance on their enemies, and I see no reason to discredit their testimony, because of the existence of bad feeling between them and the prisoners; it is of course a ground for receiving it with caution, and the sessions judge has given Omesh Chunder Bonnerjee, the benefit of the doubt which his *alibi* created as to his personal guilt.

"Mr. Forlong, who early on the following morning, most humanely hastened to the spot to afford assistance to the wounded persons, has stated in his deposition before the magistrate that the prosecutor mentioned to him the names of several parties, who had committed the dacoity, amongst whom he remembered his naming Madaree Mundul, and Bhubhoo Hajrah. This statement was made before the arrival of the police, and when the prosecutor was in much pain and danger, and shows that he told what he saw to a most respectable person, as early as 9 o'clock on the following morning.

"The witnesses Komul Dooleah and Kanai Sheikh were sleeping below in the indigo godown, when the attack was made, and from the places where they had hid themselves the former identified the prisoners Nos. 1, 2, 3, 5, 6, 7, 8 and the latter Nos. 2, 3 and 8. These statements are throughout concurrent: the deponents knew the prisoners before; the dacoits were nearly

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two hours in the house, and the witnesses therefore saw them under circumstances which admitted of easy recognition.

"The witnesses Nos. 1, 5, 6 and 7, are neighbours, and No. 8 is the chowkeedar of the village, who reported the outrage to the darogah. The witness No. 8 *then* informed the darogah, that he recognized the prisoners Madaree, Goburdhun and Bhubhoo Hajrah at the time of the robbery, and has sworn to them throughout the other stages of the proceedings.

"The witness No. 2 identified the prisoners Nos. 2, 3, 4, and 6. Nos. 5 and 6 identified Nos. 2, 3 and 8, and No. 7 identified No. 8. They were all examined on the 2nd by the darogah. They were acquainted with the prisoners, and there has been no variance in their statement, with this exception, that Samboo Tautee is stated to have sworn to prisoner No. 2 before the darogah. They made known that they had recognized the dacoits that night, and it would appear from the map of the premises that they could have seen the robbers from their respective hiding places. I see no ground for distrusting the testimony of these witnesses—it is clear, probable and consistent in a remarkable degree, and its being so is a test of its truth.

"The credibility of the direct evidence is very much strengthened by the duly-attested confession of the prisoner Jhuroo, who implicated amongst others, the prisoners Madaree (No. 2), Goburdhun, Kalachand and Teencowree, and by the proof adduced on the trial of the bad character which the prisoners severally bear. Though a confession is no evidence against another, yet it may be looked to, as affording some light by which to test evidence.

"I may add that the *alibis* set up by the prisoners have been in no way supported by their witnesses.

"Witness No. 1, speaks to seeing Madaree and Bhubhoo wound Premchand with pikes, and both he and the prosecutor depose to the deceased calling out that Madaree and Bhubhoo were murdering him. Further it is established that he was one of the ringleaders of the gang, and is a man of notorious bad character. The many blows and wounds inflicted on the deceased denote a murderous intention to take life, and convicting the prisoner Madaree (No. 2), of murder, committed in the prosecution of gang-robbery, I would sentence him to suffer death, in conformity with Clause 1, Section IV. Regulation LIII. of 1803. I would convict the prisoners Nos. 1, 3, 4, 6, 7 and 8, of being accomplices in the above crime, and sentence them to imprisonment for life in transportation.

"I would acquit No. 5. He is recognized by the witness Komal Dooleah and the prosecutor, but the latter stated that he did not distinctly recognize him when he first saw him in the court-yard, though he did so afterwards, and before the magistrate he said he would not swear positively to him. His

recognition of him is therefore open to some doubt, and it is not safe to convict upon the evidence of only one person." 1852.

SIR R. BARLOW, BART.—"This is a case of dacoity in which the prosecutor's brother was killed, and himself and another brother were wounded. April 30.

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"The sessions judge in his first report states he has convicted the prisoners of dacoity attended with highly-culpable homicide (amounting almost to wilful murder) and severe wounding.

"If death ensue on an attack made by a party of dacoits, I know not under what other class of offences than that of wilful murder such crime can be enumerated.

"The circumstances of this case are peculiarly aggravated. The prisoners are parties well-known to the members of the family whose house was entered and plundered; some of them live in the same village, others in adjacent villages at a distance of half a mile or one mile. A large gang of twenty-five or thirty men attacked the house at midnight and fought their way in, breaking open door after door when the proprietors could no longer resist. Having forced their entrance they killed Premchand Mookerjea, who, independent of the wounds he received in defending the house, appears to have experienced most cruel treatment at their hands, after he had been overcome; for, though the medical officer's deposition shows that on *post mortem* examination extravasated blood was found at the box of the brain, and was in Doctor Archer's opinion sufficient to cause death, it is also shown that several other spear wounds and severe injuries were inflicted upon the deceased; and Mr. Forlong, a gentleman who was in the neighbourhood of the scene, has deposed that on reaching the spot, he saw no external wounds sufficient to cause death, but understood from the by-standers that the dacoits had jumped upon the stomach of the deceased, and had evidently caused some serious internal injury, as the deceased had been passing blood in considerable quantities. It appears, from prosecutor's statement before the magistrate, and also from the answer of prisoner No. 2 in the foujdaree and sessions court, that the object of the assailants was something more than plunder; evidently other grounds of enmity existed between some of the parties. It is immaterial, however, to determine which of these motives actuated the prisoners; they went out prepared and armed to attack the house, and in either case their offence can amount to nothing short of wilful murder, death having ensued on the attack.

"I see no ground for discrediting the evidence of the eye-witnesses by whose testimony the charge preferred against the prisoners is supported. They were all along known to the witnesses, who had ample opportunity of recognizing the assailants.

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The prosecutor and witness No. 1, Kalee Prosonno Mookerjea, defended each door as an attempt was made to force it. They named all the prisoners in the Mofussil and have told a consistent story throughout. I have no doubt that the deceased was killed by the prisoner Madaree (No. 2); when wounded, he cried out to his brother, the prosecutor, that Madaree and Bhubhoo, since dead, were endeavoring to kill him. Prosecutor also named prisoners Nos. 1, 2, 3, 4, 6, 7, 8 and 9, released, whom he recognized and knew them well,—being neighbours. Kalee Prosonno, the nephew of deceased, who was close to him and fighting by his side as they retreated from one door to another, and was himself wounded by one Panchoo, has sworn before the magistrate and the sessions judge that the prisoner No. 2 Madaree, and Bhubhoo, deceased, were the individuals whom he saw wounding the deceased, who, when attacked, cried out their names and told witness to be on his guard. He has also sworn to the enmity which existed between No. 2, Madaree, No. 9, released by the sessions judge, and the deceased. He recognized the prisoners Nos. 1, 2, 3, 4, 6, 7, 8, and 9, by his voice, on the spot, and named them at once to the police; he had known him from childhood.

"All the prisoners except No. 5 Kalachand, (the bearded,) have been recognized by the several eye-witnesses to whom they were well-known long before, as they live in the neighbourhood of Akaiepore, the scene of this outrage.

"The prisoners have one and all pleaded *alibi*, but have failed altogether in supporting their defence.

"I do not take into consideration the confession of the prisoner Jhuroo (No. 1), as forming any legal evidence against the other prisoners, though it, of course, bears upon his own case. Independent of that confession, I am of opinion that all the prisoners are proved to have been present aiding and abetting in the crime charged.

"Clause 1, Section IV. Regulation LIII. of 1803, enacts that 'all persons convicted of being the heads or leaders of a 'gang of robbers by whom a murder may have been committed, 'or of having been actively concerned in the perpetration of such 'murder, &c., or of having been present aiding and abetting 'when such murder was committed, &c., shall be adjudged to 'suffer death.' All the prisoners come within the penalty which this law has laid down. I am, however, of opinion that the prisoner No. 2 Madaree Mundul, from the very active part which he took, and from the very strong evidence on the record against him, should be considered one of the leaders of the gang. The deceased fell by his hand. The attack and all that occurred after it must be held to have been premeditated, from the

circumstance that the assailants went prepared with torches and arms. I concur in convicting No. 2, Madaree Mundul, of wilful murder, and sentence him to capital punishment.

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"The remaining prisoners Nos. 1, 3, 4, 6, 7 and 8, I convict of being accomplices, and would sentence them to imprisonment for life in transportation.

"The prisoner No. 5 Kalachand, (the bearded,) son of Shookor, has only been distinctly sworn to by one witness Kumul Dooleah, who named and pointed him out. There are two prisoners named Kalachand from the same village, Panpara, prisoners in this case. The prosecutor named the prisoner Kalachand (No. 5,) before the police; in the magistrate's court he spoke of some one resembling him. On being called upon to explain, he answered he was very unwell when before the police. In the sessions court he deposed that he could not distinctly swear to the said prisoner No. 5. The witness Kalee Prosonno Mookerjea could only speak of a person resembling the prisoner. I would give the prisoner the benefit of this confliction in the evidence and acquit him."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

PERSHAD BHOOYA

versus

DHEROO BARICK (No. 1 APPELLANT), MUDHOO MANNA (No. 2), MUSST. PEAREE (No. 3), GOLUCK BHOOYA (No. 4), MUDUN PURAMANICK (No. 5), OODOY PATUR (No. 6), GOPAL PAUL (No. 7, APPELLANT), UROON BHOOYA* (No. 8) AND MUSST. TREEPOORAH (No. 9, APPELLANT).

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The sentence passed upon the three appellants affirmed.

CRIME CHARGED.—Nos. 1 to 6, 1st count, dacoity attended with torture in the house of the prosecutor, and plundering therefrom property to the value of Company's rupees 54-7-9; 2nd count, aiding and abetting in the same; and 3rd count, having in their possession plundered property, knowing it to have been so acquired. And Nos. 7 and 9, 1st count, having in their possession plundered property knowing it to have been so acquired; 2nd count, privy to the aforesaid dacoity, and to the concealment of stolen property, knowing it to have been stolen.

CRIME ESTABLISHED.—Nos. 1 to 6, dacoity attended with torture and plundering from the prosecutor's house property to the value of Company's rupees 54-7-9, and Nos. 7 and 9, having

* Acquitted by the Sessions Judge.

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in their possession plundered property knowing it to have been acquired by dacoity.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 29th January 1852.

Remarks by the sessions judge.—"It appears that on the night of the 26th December last, the house of the prosecutor was attacked by a gang of robbers and robbed of property to the value of Company's rupees 54-7-9. He received a wound on the head from a sword, and his wife was burnt with a lighted *mussal*, with a view to make her disclose where the property was. The village police followed three of the dacoits to the house of the prisoner No. 3, Peearee, and with the aid of some other paiks, &c., succeeded in arresting the prisoners Nos. 1, 2 and 3, with part of the stolen property in their possession. On their confession the prisoners Nos. 4, 5, 6, 7, 8 and 9, were apprehended, who likewise confessed their complicity in the robbery, and also produced some of the articles stolen. The prisoners plead 'not guilty' in this court, and some of them offer no defence, others that they were in their houses on the night of the dacoity. The confessions in the Mofussil and before the magistrate are circumstantial, consistent and fully borne out by the evidence for the prosecution. The prisoners Nos. 1, 2, 3, 4, 5 and 6, were all actively and equally concerned in the dacoity, which seems to have been attended with aggravating circumstances, inasmuch as the wound on the prosecutor's head is severe, as also the burns on the person of prosecutor's wife, the marks of which are still quite distinct. The prisoner No. 7's participation in the dacoity is confined to his receiving and hiding some of the stolen property, but his crime is aggravated by his being a police paik in Government employ. The prisoner Treepoorah is implicated in the same manner as the prisoner No. 7. She is the wife of the prisoner No. 1; but as in receiving stolen property from a third party when her husband was under arrest, she acted independently, she is a responsible agent, and must take the consequences. The prisoners Nos. 1, 2, 3, 4, 5, 6, 7 and 9, are guilty of the 1st charge on which they are arraigned, and are sentenced as indicated in the statement."

Sentence passed by the lower court.—Nos. 1, 2, 4, 5 and 6, each, nine (9) years' imprisonment with labor and irons; No. 3 nine (9) years' imprisonment with labor suitable to her sex; No. 7 five (5) years' imprisonment with labor and irons, and No. 9 two (2) years' imprisonment with labor suitable to her sex, and all the prisoners to pay fine, under the provisions of Act XVI. of 1850, of Company's rupees 28-8-3, the amount differ-

ence between the value of stolen property recovered and that of which no traces have been discovered.

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Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed by the sessions judge on the prisoners *Dheroo*, *Gopal Paul* and *Treepoorah*."

PRESENT:

J. R. COLVIN, Esq., *Judge.*

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

MUDAI.

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Capital sentence for murder by decapitation, upon strong and convincing circumstantial evidence.

CRIME CHARGED.—1st count, wilful murder of Mirza Shaban Beg; 2nd count, privy before and after the fact to the aforesaid murder; and 3rd count, theft of property belonging to the deceased Mirza Shaban Beg.

Committing Officer, Mr. R. H. Russell, joint magistrate of Chumparun, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 20th March 1852.

Remarks by the sessions judge.—"I refer this case, both because I dissent with the *futwa*, which convicts the prisoner on the 2nd and 3rd counts only, and because I consider it one, which, under all its facts, should be referred for the orders of the superior court.

"The facts are briefly as follows:—On Thursday the 28th of August last, a burkundauz named Mirza Shaban Beg, stationed at the thanna of Bettiah, having been relieved, set off for Moteeharee, taking with him a cooley (the prisoner Mudai) to carry his baggage, &c. It is in evidence that they started together on that day, and that they drank freely of spirits at two different grog-shops they met with on their road, and that afterwards (the same evening) the prisoner was seen sitting by the deceased (then apparently dead drunk) fanning him and sprinkling his face with water from a cloth, and that on the following day his body was found at or near the same spot with the head completely severed, whilst both the prisoner and the bundle he had been carrying were missing.

"On Friday the 29th August, information was brought to the thanna at Bettiah that the headless body of a man was lying near the road, and the darogah setting off the same evening to inquire into the thing, was followed by some persons in the service of the Bettiah Raja, when the latter, at about 10 or 11 P. M., near a place called Lalgurh met a man carrying a bundle;

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they at once challenged him, when he dropped the bundle, and making off into the fields, effected his escape. When they came to the place, they found the bundle and a sword, which had been dropped, and which when taken to the darogah (who was only a little way ahead) were at once identified by some of the persons present, as having belonged to the deceased burkundauz; and though every search was made for the man who had been carrying them, no trace of him could be found. It was afterwards ascertained, however, that the prisoner Mudai had been that day at a man's named Hurree Chumar, having a bundle and sword with him, and suspicion being aroused from this, a reference was made to Lucknow, of which district he was known to be a resident, and on the 16th September following, the prisoner Mudai was apprehended in his own house in that jurisdiction; after which he was sent back to Moteeharee for trial.

"I may observe here, that it has been clearly proved, that on Friday the 29th, the prisoner went to Hurree Chamar's house at Sunra, and that he had both a bundle and a sword with him, which he said he had been desired by a burkundauz or sepoy to take to the thanna at Bettiah, and it is clear also that it was *after* he had left Hurree's house in the evening of that day (the 29th) that he fell in with the party who challenged him, when he dropped the things and escaped. There is some discrepancy as to the time at which he reached Hurree's house, for his daughter says, that he came there in the morning, whereas her mother (on the trial) says that he did not get there till near evening (about 5 P. M.); but there is no question as to his having been there (having the bundle and sword with him) on that day, and it is equally well established that it was in the evening (or night) of that day that he met the party, threw away the things and fled.

"When apprehended at Lucknow, the prisoner admitted having been in company with the deceased, but said that they had been attacked by dacoits, who murdered the burkundauz, and threw him (prisoner) bound into the jungle; whereas to the joint magistrate at Moteeharee he said that he had become intoxicated, and whilst in this state had wandered away from his companion; when finding the bundle in a ditch, he was taking it to Bettiah, when he was challenged by the party on the road, and then threw it away and went home. On his trial before me, he admits having gone with the deceased as a cooley, and says that they first drank four bottles of spirits at Lalgurh, and then three others at another *bhuttee* (at Bhana Chuck), when becoming intoxicated, he wandered away from his companion and slept, and when he recovered a little, he found that the bundle was missing; that he looked about for it and at last found it (he denies ever having had the sword at all), and says,

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that as he was taking it along, he came upon the party who challenged him, when he threw it away and went off at once to his house. He calls no witnesses whatever to this defence.

"The moulvee convicts the prisoner of being privy to the murder, and also of the theft charged in the 3rd count; but in this finding I do not concur, as it appears to me that there are ample grounds for a conviction upon the more serious charge. It is proved beyond all question that the prisoner accompanied the deceased; that they drank together at two different spirit-shops on the day they started; and that on the evening of that day he, (prisoner,) was seen sitting by the deceased, and apparently trying to recover him from his state of extreme intoxication. The following day he is found with the property of the deceased (who was assuredly murdered that night) at the house of Hurree Chumar, and in the evening of that day, (29th,) he is shown to have thrown down both the bundle and the sword, (indeed he only denies this as far as regards the sword) and to have fled, and both articles are described as having at that time been stained with blood, though, in consequence of the time which has since elapsed, the marks or stains have become so much effaced that it is impossible now to speak with any certainty on this point. The fact also of his at once leaving the place in which he was residing, without any reasonable cause (if guiltless) for so doing, makes against him, and he does not even pretend that he had ever thought previously of going away; and all this, together with the contradictory accounts he has given of what took place, in my opinion, forms so strong a body of evidence against him as to leave little or no doubt of his guilt. The evidence, however, being entirely circumstantial, I do not feel justified in recommending a capital sentence; and, therefore, with reference to all the facts of the case, propose that the prisoner Mudai be imprisoned for life in the jail at Allipore."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin and A. J. M. Mills.)—MR. A. J. M. MILLS.—"The evidence in this case is entirely circumstantial, but is strong and convincing, and, combined with the conduct and admissions, of the prisoner, affords a violent presumption of his having robbed and murdered the deceased.

"It is proved that the deceased engaged the prisoner as a cooley to carry his bundle; that they travelled together, and drank spirits on the road at two spirit-shops; that the deceased became insensibly drunk; and that the prisoner was last seen sitting by the deceased, who was sleeping under a tree, sprinkling water over his face from a cloth.

"It is proved that the headless body of the deceased was found on the following day at or near the tree, with a deep gash on the left side, and the head a short distance from it.

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"It is proved that the prisoner was that day at the house of an acquaintance, Hurree Chumar, and had a bundle and sword with him, which he said he had been desired by a burkundauz to take to the thanna.

"It is proved that on the same night he was met and challenged near Lalgurh; that he threw down a bundle and sword and escaped; and that the contents of the bundle and the sword belonged to the deceased.

"*Lastly*, it is proved that he fled the district, and went to Lucknow, where he was apprehended.

"The facts, taken with the contradictory and most unsatisfactory accounts the prisoner has given of his conduct, leave no reasonable doubt on my mind of his having murdered the deceased: indeed, they seem to me to be inconsistent with any other rational conclusion. Decapitation is not the act of dacoits, and the sub-assistant surgeon states that it might have been effected by one person, if the deceased was, as it is shown he was, under the complete effects of intoxication.

"The circumstance of the evidence being only of a presumptive kind should not bar a capital sentence. It is a murder of the worst description; and I would sentence the prisoner capitally."

MR. J. R. COLVIN.—"The prisoner admits that he was the companion of the murdered man on the night (of the 28th August), previous to the day in the early part of which the headless trunk was discovered near the public road. On the next evening, the 29th August, he was, he also admits, seen when moving off *after dark* with the bundle of the deceased's clothes. It is well proved by other witnesses that the prisoner, when seen and pursued, let fall not only the bundle of clothes, but also the sword which had belonged to the deceased. The darogah's report of August 30th mentions that the sort of carpet or *sutrunjee*, in which the bundle was tied up, had, when so found, marks of fresh stains of blood, as if the sword had been wiped in it. The witness, Ram Purtab Pande, also on the trial, mentions these marks of blood. The prisoner, on his own acknowledgment, instead of returning when he was detected with the bundle to the town of Bettiah, from which he had started with the deceased, hastened to escape to his home in the Lucknow territory. His accounts of what happened on the night of the 28th August, when the deceased was murdered, have been grossly inconsistent, and are clearly quite untrustworthy. I agree with Mr. Mills that there is not the slightest rational ground for doubting that the prisoner was guilty,—whether alone, or aided by any chance accomplice is in no way material,—of the murder; and I must, therefore, concur in the proposed capital sentence."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

ALADI KOLOO

versus

ANUND SHEIKH (No. 1), GOPAL GAIN (No. 2), SEETUL SHEIKH (No. 3) AND PURAN SHEIKH (No. 4).

1852.

April 30.

Case of ANUND SHEIKH and others.

Sentence of ten years' imprisonment for dacoity, confirmed. This case affords an instance of the necessity of great caution in accepting evidence to recognition in dacoity trials.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, in which property to the value of rupees 81 was plundered; 2nd count, accomplices in the above dacoity; and 3rd count, Nos. 2, 3 and 4, receiving and keeping a part of the property, knowing it to have been acquired by the above dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. E. Bentall, additional sessions judge of Nuddea, on the 25th February 1852.

Remarks by the additional sessions judge.—"A dacoity took place on the 25th of December, at the house of the prosecutor, who lost about 81 rupees worth of property, and a report of the circumstance was the next day made to the police, and the darogah went to the spot to investigate the case, and it was said that certain prisoners had been recognized among the dacoits; but on the 27th of December another dacoity took place, and a man (one Salem) who was apprehended on that occasion and has been committed for trial, gave information on the 29th of December, which led to the apprehension of Anund, (prisoner No. 1,) who made a confession which led to the apprehension of other prisoners. Anund made a second confession of having gone with the dacoits when he was brought before the magistrate. Gopal, (No. 2,) also confessed before the police and before the magistrate. Besides this, a plate was found in his house, and a *batee* was produced by him from a tobacco field, which articles the prosecutor claims, and which, when he produced them, the prisoner said he obtained by dacoity. The prisoner Seetul Sheikh, (No. 3,) made a confession before the police on the morning after his apprehension. He also produced a brass plate from a place near his house, and said it was obtained by dacoity. The plate has no mark on it, and the recognition cannot be trusted. He denied his guilt before the magistrate. The darogah wrote the confessions of this man and of Gopal, one after the other, at the same place. Gopal repeated his confession before the magistrate, and it may be believed that the confession before the darogah was truly made. If the darogah had written

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a false confession of Seetul, he is not likely to have done so until after he had written that of Gopal; but Seetul's confession was written before that of Gopal. The other three prisoners said before the magistrate that Seetul was one of their party; and I think that there is good reason for trusting the confession which was written by the darogah, on which I convict him. Puran Sheikh, (No. 4,) confessed before the police and before the magistrate. A cloth was found in his house, which, at the time that it was found, he said was obtained by dacoity, and which the prosecutor claims. His defence is, that he was accused because he lived with Anund, (No. 1,) who is a notoriously bad character. I convict Nos. 1, 2 and 4, on their confession before the magistrate. The gang, who committed this dacoity, were only seven men; but I have given them a rather heavy punishment, because they met in one thanna, and went about ten *coss* into another thanna to commit the dacoity; and for so small a gang to do so, they must have had confidence in each other."

Sentence passed by the lower court.—Each, ten (10) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The clue to the apprehension of the prisoners in this case was obtained accidentally by the darogah of a thanna other than that in which the occurrence took place. The confessions of the prisoners were also first made to him. He could have had no motive for extorting confessions of this crime from innocent parties. The confessions are most circumstantial and bear the stamp of truth upon them. The prisoners had no defence to make at the trial, and have urged the most futile grounds of appeal. The sentence is by no means too severe. The appeal is rejected.

"This case affords an instance of the necessity of great caution in accepting evidence of recognition in dacoity trials. As a general rule no persons, known to the people of the house, are among the attacking party; and dacoits put out their *mussuls* immediately the plunder is over, and before they come out of the house robbed.

"I observe that the chowkeedar of the village, where the occurrence took place, deposed to the darogah and to the magistrate that he identified one man. The prosecutor deposed that he recognized six, and a witness, Keenoo, that he recognized three of the dacoits by the *light of the mussals as they came out of prosecutor's house.* The persons whom they named were *neighbours* of the prosecutor. Nothing found in their possession, but one old rag was recognized by the prosecutor, and no circumstantial evidence of any kind was elicited. Nevertheless, not only were the persons named sent in to the magistrate for trial, but after the real clue was obtained, and the confessions of the

prisoners last arrested showed most satisfactorily that those named in the first inquiry had nothing to do with the offence, some of them were detained in order that their means of livelihood should be inquired into. This was not just. They should have been instantly released, whatever suspicion may have attached to their character.

1852.

April 50.

Case of ANUND SHEIKH and others.

"The prosecutor and Keenoo, in the sessions, deposed that they recognized no one. The latter further added that he was not near the spot at the time of the occurrence, and that he was beat by the darogah to induce him to give evidence of recognition. Hano Chowkeedar was not questioned on the point in the sessions court.

"Inquiry into the injurious perjury which has been committed, is manifestly demanded. A copy of this note will therefore be sent to the superintendent of police, for such orders as he may deem necessary."

SUMMARY CASES.

PRESENT:

J. R. COLVIN, Esq., *Judge*.

LAL MAHOMED, ALIAS MUDHOO, PETITIONER.

1852. April 10.

Case of LAL MAHOMED, *alias* MUDHOO.

The Nizamut Adawlut cannot pass orders in a case regarding possession of land, their authority being confined to criminal trials by the terms and spirit of Act XXXI. of 1841.

Where land within a military cantonment is the property of Government, as referred to in Section XXVI. Regulation XX. of 1810, it rests entirely with the officer commanding to give directions regarding its disposal.

THIS case was submitted to the Nizamut Adawlut under Section V. Act XXXI. of 1841, by the sessions judge of Patna, with the following letter, No. 215½, dated 25th March 1852.

"The petitioner complained on the 13th February to the joint magistrate of Dinapore cantonment, and applied for redress by the enforcement of Act IV. of 1840. He stated that the building in question having fallen into decay, the superintendent of the sudder bazar had issued a proclamation inviting any person to repair it, by re-building a wall which had fallen down; that as it belonged to him, he had re-built the wall, after obtaining permission from that officer, and had now been, when the work was nearly finished, violently opposed by Mahomed Alee, who had turned his work-people out of the premises.

"The order passed on this petition by the joint magistrate on the same day is to the effect that cases of this description are not taken cognizance of in the joint magistrate's office, but in the superintendent of the sudder bazar's, in which office applicant can, if he chooses, lay his claim.

"The applicant, after the lapse of a month, *viz.*, on 17th March, applied to the officiating magistrate of this city, who sent the case to this court with the letter, of which the annexed is a copy, after sending for the papers and calling on the present joint magistrate, Captain Spencer, for an explanation.

"That explanation repeats the substance of Lieutenant Harris' order of 13th February, and adds that in the court of the superintendent of the sudder bazar, Mahomed Alee, the party complained against, had obtained an order sanctioning his building up the wall of the premises in dispute.

"The order of the 13th February appears to me to be clearly illegal. The joint magistrate refuses to exercise the power vested in him by Act IV. of 1840, on grounds clearly insufficient, and showing in fact that the act remains a dead letter as far as his court is concerned. For this reason I send up the record of the case, in order that the order may be annulled, and the joint magistrate be instructed to pass an order conformable to the provisions of the Act, and be instructed as to what will be his duty in future."

Resolution of the Nizamut Adawlut, No. 478, dated 10th April 1852.—(Present: Mr. J. R. Colvin.)—"The court, having perused the papers above recorded, observe that the Nizamut Adawlut cannot interfere with the order to which this reference relates, as it does not regard a criminal trial, to which class of

1852. April 10. Case of LAL MAHOMED, *alias* MUDHOO.

cases their authority is confined by the terms and spirit of Act XXXI. of 1841.

"The sessions judge should address the officer commanding at Dinapore, as to the authority of the superintendent of the sudder bazar in such a dispute as that out of which the reference has arisen, and as to the orders of Government by which the authority has been conferred. If the sessions judge should, on full examination, think that the Regulations and Acts of the Legislature do not warrant the exercise of such authority by a superintendent of bazars, in a military cantonment, irrespectively of the jurisdiction of the ordinary district courts, he can then make a further representation, on the general point, for the court's consideration and orders."

NOTE.—With reference to the above, the following correspondence subsequently passed on the subject:

From the Sessions Judge of Patna to the Register of the Sudder Nizamut Adawlut, No. 1, dated 4th May 1852.

"I have the honor, conformably to the instructions conveyed to this court, in the second paragraph of the Resolution of the Court of Sudder Nizamut Adawlut, of the 10th April 1852, No. 478, to submit the following further report on the case noted in the margin, accompanied by a copy of my letter, dated 17th* ultimo, to the address of Brigadier General Young, commanding the Dinapore division, and of his reply, with its annexations in original.

Lal Mahomed, *alias* Mudhoo.

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* *From Sessions Judge of Patna to Brigadier General Young, No. 235, dated 17th April 1852.*

"I have the honor to annex extracts, paras. 1 to 4 inclusive, from a report made by me to the presidency court of Nizamut Adawlut, dated 25th ultimo, and from the orders passed thereon by the court in para. 2 of their Resolution of the 10th instant, and, with reference thereto, to solicit the favor of your causing the information indicated to be supplied to this court."

From Brigadier General F. Young to the Sessions Judge of Patna, No. 107, dated 24th April 1852.

"I have the honor to acknowledge your letter, No. 235, of the 17th current, with annexments relating to the case of Lal Mahomed, *alias* Mudhoo, heretofore adjudicated by Lieutenant R. R. Harris, superintendent of the Dinapore sudder bazar, and with advertence to para. 2nd of the Resolution passed upon the case in appeal, on the 10th instant, by the presidency court of Nizamut Adawlut, I beg to state that in dealing *finally* with the above cited case, the superintendent both exceeded his authority and omitted to follow the course prescribed by the Regulations, according to which—

"*1st.*—The difference between the parties (both residents of the sudder bazar) should have been submitted to a *punchayet* for adjustment, supposing the disputants to have been consentient, of which nothing appears to the contrary.

1852.

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Case of LAL MAHOMED, *alias* MUDHOO.

"I conclude that the General Order of the 27th May 1824, must be construed together with Regulation XX. of 1810, and that it cannot be understood to alter the limits within which the jurisdiction of the civil and military courts are respectively circumscribed by that Regulation. For this reason I conclude, that the cases of debt and disputed claim, referred to in the General Order, can be no other than those described in the Regulation in the words 'actions of debt and all personal actions.' But the application of a party to a cantonment joint magistrate, praying to be reinstated in possession of a house, of which he alleges himself to have been forcibly dispossessed, cannot, it appears to me, be considered in the light of a personal action of which a military court of requests, or a military superintendent of a sudder bazar, is competent to take cognizance, under the Regulation or General Order in question. The value of the property claimed and the consent or refusal of either party to settle the matter by arbitration, not appearing on the proceedings, need not be further referred to. With reference, therefore, solely to the nature of the claim, the present case appears to me to be one in which the exercise, by the superintendent of the sudder bazar, of the authority described in the Brigadier General's

"2nd.—The complainant being dissatisfied with the superintendent's award in the case, had the right of appeal by petition to the local commanding officer, instead of which, it appears, from the records of the sudder bazar office, that he, Lal Mahomed, *alias* Mudhoo, was not referred for such purpose by the superintendent to the appointed authority, but, unadvisedly, to the Patna civil court.

"In transmitting for your information the enclosed extracts* from Regulations for the control and management of sudder bazars, corroborative of the foregoing exposition, I beg leave to express my opinion that the case under discussion, is not duly cognizable before a civil court."

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* *Extracts from Regulations relating to General Station Bazars.*

G. O. G. G. 15th January 1811.

All general bazars, appertaining to garrisons and to divisions, and principal stations of the army, are to be placed entirely under military authority. Those in the Lower provinces to be under the control of Officers commanding at stations, respectively, but subject of course to the superior authority of the officer in command of the district.

Extract General Orders by the Right Honorable the Governor General in Council.

FORT WILLIAM, 27TH MAY 1824.

NO. 154 OF 1824.—The Right Honorable the Governor General in Council is pleased to direct the publication of the following orders respecting sudder bazars, for general information:

(4th.)—In all cases of debt or disputed claim (where both parties are residents of the sudder bazar,) the officer in charge will strongly recommend the parties to submit their differences and claims to a *punchayet* for adjustment; the decision of this court of arbitration will be upheld by the officer in charge, except in instances in which corruption or partiality may be established against the arbitration; should such be the case. however, or either of the parties object to submit their claims to a *punchayet* for settlement, the affair must be settled under existing regulations and orders.

(5th.)—It is to be distinctly and unreservedly explained to the bazar people, that appeal to the commanding officer, through his Major of Brigade, by petition, is at all times open to them in instances where they feel themselves aggrieved by the award passed or punishment inflicted; at the same time it is in nowise intended by this control to afford to registered inhabitants of sudder bazars, an unlimited facility of frivolous and vexatious appeals, against the decision of the authority, under which they are more immediately placed; and to prevent the recurrence of such appeals, it will be the duty of the commanding officer to bring the appellant before a court martial, when his appeal is obviously frivolous and vexatious."

1852. April 10. Case of LAL MAHOMED, *alias* MUDHOO.

letter, is not warranted by the Regulations and Acts of the Legislature, and I again refer it accordingly."

From the Register of the Nizamut Adawlut to the Sessions Judge of Patna, No. 898, *dated* 15*th May* 1852.

"The court having had before them your letter, No. 1, dated the 4th instant, submitting, with reference to their Resolution No. 478, of the 10th ultimo, a further report on the case noted in the margin, desire that you will request the Brigadier General, Commanding the Dinapore Division, to favor you by stating whether the land, on which the house, which was the subject of dispute in this case, is situated, is land the property of Government, such as is referred to in Section XXVI. Regulation XX. of 1810. In such a case it would rest entirely with the commanding officer to give directions regarding the tenure or occupation of the house. Otherwise, it does not appear to the court that a dispute regarding a house falls within the class of actions, these being merely *personal* actions, contemplated by Section XXII. of the above Regulation. The court would be glad to receive any further statement of the views of the Brigadier General on this point, which he may think material as showing, if the land be *not* the property of Government, the ground of his exclusive authority in respect to a claim of this character."

Lal Mahomed, *alias* Mudhoo.

From the Sessions Judge of Patna to the Register of the Sudder Nizamut Adawlut, No. 18, *dated* 5*th June* 1852.

"According to the directions contained in your letter, No. 898, dated the 15th ultimo, I addressed the Brigadier General Commanding at Dinapore, and have the honor to annex copy of his letter* dated the 3rd instant, No. 129."

From the Register of the Nizamut Adawlut to the Sessions Judge, of Patna, No. 777, *dated* 10*th June* 1852.

"The court, having had before them your letter, No. 18, of the 5th instant, direct me to inform you that, upon the information therein given, no further notice of the subject, on the part of the court, is required."

* *From Brigadier General F. Young to Sessions Judge of Patna, No.* 129, *dated* 3*rd June* 1852.

"In reply to your letter, No. 16, of the 26th ultimo, and with reference to its annexment,* I have the honor to intimate that the house situate in the Dinapore sudder bazar, to which 'Lal Mahomed, *alias* Mudhoo,' lays claim in appeal, stands on land absolutely appertaining to Government and resumable for any public purpose.

"The foregoing information renders, I presume, all further notice of the matter in question unnecessary on my part."

* Copy of a letter from the Register of the Court of Nizamut Adawlut, No. 898, dated 15th May 1852.

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

DOKHEE GOPE

versus

KHEIR SINGH.

1852.

April 22.

Case of KHEIR SINGH.

It is culpable homicide under the Mahomedan law, if a party be killed by a blow given on account of his taking his cattle to trespass in the crops of another.

CRIME CHARGED.—Wilful murder of Dewany.

Committing Officer, Mr. A. E. Russell, officiating magistrate of Purneah.

Tried before Mr. D. Pringle, sessions judge of Purneah, on the 26th August 1851.

Remarks by the sessions judge.—" The sentence in this case having been quashed by the Nizamut Adawlut, as intimated in paragraph* 2 of their letter, No. 1162, dated the 24th October last, I have now to record my opinion in affirmation of the *futwa* acquitting the prisoner. Under the English law, I am aware that killing in defence of property, is justifiable only in felonies attended with force, and in no case of misdemeanor. Being so declared, however, to be applicable to this homicide,

See Statement† No. 8, for August last.

* *Extract (Paragraph 2) from letter from Register of the Nizamut Adawlut to Sessions Judge of Purneah, No.* 1162, *dated* 24*th October* 1851.

" The court quash your sentence of acquittal in the case of Kheir Singh, No. 9, of statement No. 8, for August last, as it was passed in opposition to your expressed view of the law applicable to the case. They desire that you will re-consider the evidence against the prisoner, and the *futwa* of the law officer, and then proceed to the disposal of the case in a legal manner."

† *Remarks by the Sessions Judge of Purneah, in Statement No.* 8, *for August* 1851.

" The prosecutor in this case states that the deceased, his brother, was cow-herd of Mahunt Mohdeb Bhartee, one of whose buffaloes having strayed into the field of the prisoner, the latter attacked deceased with a *banghy* stick; who was brought home senseless on a buffaloe, by the witnesses Bokhra and Sahibram, and only survived the night. Bokhra and Sahibram depose to going with the deceased to Ningwa Tapoo before daybreak to graze their buffaloes, and to a buffaloe of the deceased straying in the prisoner's field; that deceased having gone to drive it back, he was struck on the head by the prisoner with a *banghy* stick when he fell senseless, and being taken home by the witnesses, next morning died. The evidence of these witnesses, however, is so conflicting as to be utterly worthless to establish this homicide, which depends therefore on the prisoner's own confession before the darogah and the magistrate; in which he states that after frequent trespass of buffaloes during the night in his standing crops of paddy, *urhur*, and hemp, he was on the look out, and that morning having caught the buffaloes of the deceased, who was standing over them, he struck him once with the stick in his hand, a short bamboo, here produced, but not with a *banghy* stick, who then drove off his buffaloes across the *nullah*. On the trial, the prisoner merely admits to so striking the buffaloes. The *futwa*, rejecting

1852. by the Mahomedan law, I consider the prisoner entitled to an acquittal under such verdict."

April 22.

Case of KHEIR SINGH.

Resolution of the Nizamut Adawlut, No. 547, dated 22nd April 1852.—(Present: Mr. J. R. Colvin.)—"The court, having perused the papers above recorded, connected with the case of Kheir Singh, direct that a copy of the *futwa** of the law officer of the Nizamut Adawlut be communicated for the future information and guidance of the district law officer. It shows that the killing of the deceased was not, under the circumstances, justifiable under the Mahomedan law.

"The court do not interfere further as to the particular case, as the prisoner has been acquitted by the sessions court."

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the evidence of the eye-witnesses as wholly unworthy of credit, finds that, as the deceased was at night grazing his buffaloes on the prisoner's crops, it was theft, and a thief might be so attacked by the owner, who would not be answerable for the consequences. Without subscribing to the opinion here expressed, that homicide under such circumstances is justifiable, I yet concur in the prisoner's acquittal. The civil surgeon has deposed to a fracture of the skull from a blow which occasioned death. From the contradictory statements of the two first witnesses, I have not a doubt that they, with the deceased, had been in the habit, as declared by the prisoner, of so driving their buffaloes during the night into his standing crops; who on this occasion escaping, the deceased alone was caught in the act. The only evidence to convict the prisoner is his own confession; in which he declares that the deceased, after he had received the blow, drove off his buffaloes. From the statement of the medical man it is clear he could not have walked far, after receiving such injury; but it was yet night, and the intent to strike the prisoner on the head under such circumstances is not to be inferred from the blow so falling. For which reasons, I considered that I was justified in acquitting the prisoner."

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* فتواي مولوي عدالت ضلع درين مقدمه بعدم ثبوت قتل عمد و سزاوار ببودن قصاص درست است زيراكه گواهي گواهان رويت درينمقدمه بجهت اختلاف قابل اعتماد نيست و مدار جرم گهرسنگه مدعي عليه پسر كوردت فقط بر اقرار مدعي عليه مرقوم ثابت مفصل و فوجداري است و مدعي عليه مرقوم در هردو جا ببردن ديواني هالک بضرب لاتهي اقرار نموده و حال لاتهي كه آلة مثقل بود يا نه معلوم نيست بنابران قتل عمد ثابت نشد و موجب قصاص نگرديد بلكه اين نوع قتل شبه عمد است و بر مدعي عليه مرقوم درينصورت اداي ديت لازم و چرانيدن گاوميش در زراعت غير شرعا دزدي و دلعت اماجت دم چرانندهٔ آن نيست والله اعلم بالصواب المرقوم بست و دوم ماه اپريل سنه ۱۸۵۲ ع

فضل الرحمن

فضل الرحمن قاضي صدر كلكته

CASES

IN THE

NIZAMUT ADAWLUT.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

MUSST. MANJUN

versus

MOHUNLALL* (No. 29) AND ALUNGKAR (No. 30).

1852.

May 1.

Case of ALUNGKAR and another.

In a case of murder, circumstantial evidence to complicity not of a conclusive nature, rejected as insufficient for conviction when the confession of the principal contained an admission that he was the sole perpetrator of the crime.

CRIME CHARGED.—No. 29, wilful murder of Deknah, deceased, husband of the prosecutrix, and No. 30, accomplice in the above crime.

Committing Officer, Mr. A. E. Russell, officiating magistrate of Purneah.

Tried before Mr. F. Lowth, officiating sessions judge of Purneah, on the 12th March 1852.

Remarks by the sessions judge.—"The prisoners pleaded 'not guilty' to the charges preferred against them.

"The following appear from the record to be the facts of the case:—On Monday the 22nd December last, the deceased had been employed by the prisoner Mohunlall to repair his house, which had been a few days previous destroyed by fire. During the following day, the deceased remained at home, and had retired with his family to rest, when about midnight the prisoner Alungkar came and called him, requesting him to accompany him to the other prisoner's house, on the plea that he was required to do some work. On his wife refusing to allow her husband to leave his family at that hour, the prisoners entered the dwelling and forcibly took him away. Having a sick child, the prosecutrix was unable to accompany her husband, or to

* Sentenced capitally by the Nizamut Adawlut on the 14th May. See page 816.

1852. May 1. Case of ALUNGKAR and another.

follow to ascertain whither he had been taken. In the morning, however, she proceeded to the prisoner Mohunlall's house, where Alungkar, being his servant, also resided, but failed to meet either of the prisoners, or her husband: she then returned home; but shortly after was informed by Puchkoo Chowkeedar, witness No. 9 and Manick, witness No. 10, that her husband had been murdered, and that the corpse was lying near the banks of the river Sueanoo, where they had gone to perform their morning ablutions and had found it. The chowkeedar then proceeded to arrest Mohunlall, whom he found in a neighbouring village, and then lodged information of the matter at the *phandee* Doobkool, where the police darogah of thanna Nanuggur happened to be at the time, and who immediately repaired to the spot, and held the requisite inquest and investigation.

"From the evidence of the witnesses named in the margin, it appears that on the night in question, 23rd December 1851, or 9th Poos 1258 B. S., the deceased was taken to the prisoner's house, and that the prisoner Mohunlall then accused him of having taken some jewels and property which had been buried in the flooring of his house, and which he suspected the deceased of having dug up and removed whilst employed on the day previous. The deceased, however, denied the charge. The chowkeedar then, on Balkee refusing to stand security, told the prisoner Mohunlall to keep the deceased till morning, when he would take charge of him and convey him to the thanna. In the morning, however, he found neither of the prisoners at their house, nor the deceased at his own; but an hour or so after day-break, the chowkeedar and Manick proceeded to the river side, and whilst engaged in their ablutions, heard a jackall crying in a little patch of grass jungle close by, and on going to the spot, to ascertain the cause and drive the animal out, discovered the deceased, lying on his right side, with his throat cut, and a *hunsooah*, (blade, seven and a half inches long, one and three quarter inches broad, at the centre stained with blood, handle three and three quarter inches long,) or reap-hook, (produced in court), about three feet from the head, and a quantity of blood on the ground near the body. There were also some clothes lying near the feet of the corpse, but not stained with blood.

Puchkoo Chowkeedar, No. 9.
Manick, No. 10.
Balkee, No. 11.

"The witness Balkee further deposed, that as he was returning to his house from the ghaut of the river, on the Wednesday morning, before day-light, he saw three persons at a short distance from him going to the river, and by their voices recognized the two prisoners and the deceased. Their conversation, however, did not lead him to infer that they were quarrelling.

1852.

May 1.

Case of ALUNGKAR and another.

"The witness Inder Sein, No. 14, also deposed that on his returning from the river, he also met the prisoners and the deceased on the road going towards the river, and being six or seven cubits distant from them clearly recognized them.

"Goordil, witness No. 15, further declared, that when out early in the morning, he heard, from a distance of about two *russees*, the deceased calling out *dhouro, dhouro*, from the direction of the grass jungle where the body was found; but that he did not go to ascertain the cause of his so calling out, as the deceased was in the habit of fishing in the river, and thought possibly he was so engaged at the time.

"Koomiye, witness No. 13, deposed to the prisoner Mohunlall, having on the Wednesday evening, borrowed the reap-hook from Narain, witness No. 12, on the plea of cutting some bamboos, and identified the weapon produced in court. The witness Narain was unfortunately prevented by sickness from attending the court, and therefore, could not be examined to this point. His evidence before the magistrate's court was, however, to the above purport.

"The *sooruthal* drawn up by the police darogah, on the 24th December 1851, showing the body to have been found lying on its right side, with the throat cut, the wound being four fingers in length, and the reap-hook lying near the head, and a cloth near the feet of the corpse, and the ground in front of the body saturated with blood to the extent of four cubits, was read over and duly attested by the subscribing witnesses, Attaoollah, No. 3, and Bhodoo, No. 4.

"Doctor Beale, the civil assistant surgeon, also deposed to his having examined the body on the 27th December 1851, and found that the deceased's death had been caused by a wound across the fore-part of the throat, dividing the larynx and large blood vessels of the neck, the edges of the wound being jagged and irregular, as if more than one cut had been inflicted. He was also of opinion that death, from hæmorrhage consequent on the wound, must have ensued almost immediately; and that the weapon in court was sufficient to cause such wound. Further, that it was impossible for the deceased to have himself inflicted such an extensive wound with such a weapon, the sharp edge of it being concave, and both the point and heel blunt.

"Before the police darogah, on the 25th December, the prisoner Mohunlall, declared himself to have been falsely accused, and urged that, having notified to the chowkeedar Puchkoo and others his suspicions of the deceased having discovered and removed his property, buried in the flooring of his house, whilst engaged on the Monday in repairing it, and clearing away the rubbish consequent on his dwelling being destroyed by fire, those parties had spoken to him on the subject, and that the

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deceased during the Tuesday night, brought and left on the site of the prisoner's house a portion of the property, and that as he often heard the deceased talk of committing suicide, he must have done so from shame and fear of the consequences of his having appropriated the prisoner's property.

"Before the officiating magistrate, on the 29th December, the prisoner recorded a full confession, to the following effect:—That in truth he had killed the deceased; that on Saturday, his house was accidentally destroyed by fire, and having buried all the jewels, cash, &c., he possessed, in an earthen vessel in the flooring of the northern room of his house, and with the aid of several neighbours prepared a small shed for his own temporary accommodation, he called the deceased to clear away the rubbish, and repair the foundation of his house, which he did; but at the time discovered the buried property; that on Tuesday, the prisoner wished to take up his abode in the shed or *jopree* newly erected, but the deceased dissuaded him from so doing, saying it was an unlucky day, and taking advantage of the opportunity must have removed this property, as on visiting the spot at night the prisoner could not find it; that he then informed Puchkoo Chowkeedar of the circumstance, and during the night, at the chowkeedar's suggestion, the deceased had brought and buried half the property in the flooring of the southern room; that in the morning the prisoner saw the deceased running off in a southerly direction, and taking the weapon produced in court, he followed him, and taking advantage of the deceased falling in the grass jungle cut his throat and returned home. The prisoner further admitted that he had borrowed the reap-hook which belonged to the deceased, declaring that he alone committed the deed; that blood was on his clothes; and that he recorded the confession of his own free will and accord.

"This confession was read over and duly attested by the subscribing witnesses, Musahib Alee, No. 6 and Sheikh Gholam Mahomed Hossein, No. 7.

"Before the darogah, on the 26th December 1851, the prisoner Alungkar denied the charge, urging that it had been brought against him out of malice, and entered into a statement nearly similar to that recorded in his defence before this court, as hereinafter detailed.

"Before the officiating magistrate, on the 29th December, the prisoner recorded a statement similar to that given by Mohunlall up to the time of the deceased being seen running away towards the river; that he then saw Mohunlall follow him with the reap-hook, but did not go himself; that he did not see the deed committed; that the weapon belonging to the deceased had been borrowed by Mohunlall; and that he afterwards went with the chowkeedar and others, and saw the body of the deceased with

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the throat cut; he further declared that he made this statement of his own free will and accord.

"This statement was likewise read over and duly attested by the subscribing witnesses, Nos. 6 and 7 before named.

"It appears also from the evidence of the witnesses Doondee, No. 1 and Jureebux, No. 2, that at the time of his apprehension the prisoner Alungkar said 'let me off, I have done nothing; if 'any body killed him, Mohunlall did it.'

"Before this court the prisoner Mohunlall pleaded in his defence that he alone could not have killed the deceased; that the witnesses for the prosecution had all been bribed to give false evidence against him; that he is the only person of his caste (*hujjam*) in the village; and that all the other residents of different castes are indebted to him in small sums of money; that the deceased on Tuesday night brought and buried half the property in the southern part of the foundation of his house in the presence of the chowkeedar Puchkoo and five other persons (Boondee, witness No. 21 for the defence, Manick, Balkee and Narain, witnesses Nos. 10, 11 and 12, for the prosecution, and the prisoner Alungkar) and concluding the deceased had restored all the property he went to the spot, but found a portion wanting; that he, next morning, gave the deceased in custody to the chowkeedar, and about a *ghurrie* after day-break went for some bamboos to a neighbouring village, where the chowkeedar found and arrested him about one and a half *puhur* or 10 A. M., and told him of the deceased having been killed. The prisoner further pleaded that at the time of his recording his confession before the magistrate's court he had been suffering from fever four or five days, and after reaching the station had had no meal, but smoked some tobacco and was not in his proper senses, and therefore knew not what was recorded. The prisoner called no witnesses to prove his having made the deceased over to the chowkeedar, but cited several to establish the fact of his having gone to a neighbouring village on the Wednesday morning for bamboos, and therefore not having maltreated the deceased.

"The prisoner Alungkar pleaded that he never called the deceased on Tuesday night, but that Mohunlall had done so; that the charge had been brought against him out of spite, because he would not allow the deceased, who was his uncle, and his sister to cut his paddy crop; that Mohunlall, in the presence of the chowkeedar, Boondee, Manick, and himself, said he suspected the deceased of having stolen his property, and on his denying the accusation, gave him in charge of the chowkeedar, who removed deceased to Manick's house; that the prisoner then went to watch his paddy close by, and whilst seated in his shed saw the chowkeedar come to Mohunlall's wife, and assure her of the restoration of the property, which after a short time the deceased

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brought and flung down on the southern part of the foundation of the house and decamped; that Mohunlall saw him and followed him with the reap-hook in his hand, but prisoner remained at home and knew nothing further of what had become of the deceased or whither Mohunlall followed him. The prisoner cited some witnesses to prove his being at home on the morning of the occurrence.

"The evidence cited for the defence was considered altogether insufficient to exculpate the prisoners, for the following reasons:—Of those called by Mohunlall prisoner, Munbode, No. 16, deposed to the prisoner having on a Wednesday in Poos (but could not say what Wednesday) come to his house, a *coss* off, and asked for some bamboos; but this was half a *puhur after* day-break; and as the deed must have been committed *before* day-break, and the distance of one *coss* could easily be travelled in the interim, his evidence was of no value. Nidhee, witness No. 19, deposed to the prisoner having asked him for some bamboos a day before the occurrence. Boondee, witness No. 21, deposed to his seeing deceased at the prisoner's house on the Tuesday night, and that the deceased denied having stolen his property. He also pleaded ignorance of the deceased having restored any of the property, and Man Singh, witness No. 23, denied having seen the prisoner going for bamboos on the Tuesday morning. Of the remaining witnesses the prisoner refused to examine Jan Mahomed, No. 17, Ghuncoo, No. 18, and Bhoomun, No. 22; and Jeebun, No. 20, was not in attendance at the court. Of the witnesses cited by the prisoner Alungkar, Man Singh, No. 23, denied having seen him on Wednesday morning, whilst Jhooteeah and Doondea, Nos. 24 and 25, depose to their seeing him about 12 o'clock in the day.

"The *futwa* of the law officer convicts the prisoner Mohunlall of the crime charged, on the confession recorded by him in the magistrate's court, and declares him liable to punishment by *akoobut;* and acquits the prisoner Alungkar, remarking that, except the confession of Mohunlall, there is no proof of guilt against the prisoners, and therefore the charge of being an accomplice in the murder is not proven against Alungkar, who may be considered in the light of a witness.

"In this finding in respect to the prisoner Mohunlall, I concur; but not so as to the acquittal of the prisoner Alungkar, for the following reasons:—The prisoner, both before the officiating magistrate and this court, admits his having seen the prisoner Mohunlall on the Wednesday morning follow the deceased armed with the reap-hook. He allows that he was present at Mohunlall's house on the Tuesday night when the deceased was accused of having stolen the property, whilst the evidence of the witnesses Nos. 9, 10 and 11, for the prosecution, showed the deceased to have been detained there all night. The depositions of the pro-

secutrix and chowkeedar, witness No. 9, likewise clearly establish the fact of neither the prisoner nor the deceased being found at Mohunlall's house on the Wednesday morning. Further, from the evidence of the witnesses Nos. 11 and 14, it is clear that both the prisoners and the deceased proceeded in company early on the Wednesday morning *before* day-break, in the direction of the river, near which the deceased was heard by witness No. 15, calling out '*dhouro, dhouro*,' and that his body was afterwards found near that spot by the witnesses Nos. 9 and 10. It is also in evidence that the deceased was a hale, robust, middle-aged, man, and therefore not likely to be overpowered by the prisoner Mohunlall alone, who also in his defence before the court says he could not have killed the deceased single-handed. The law officer discredits the evidence of the witnesses to the fact of the two prisoners being seen in company with the deceased on the Wednesday morning; but under all the circumstances of the case, and considering that the prisoner Alungkar's absence *from home* on that morning is clearly proved by the witnesses, both for the prosecution and defence, together with his admission of having seen the prisoner Mohunlall following the deceased armed with the reap-hook, and as the prisoner Mohunlall confessed to his having so followed the deceased to the grass jungle, where the body was found, I see no reason whatever to doubt it, or that of the witness No. 15, to the fact of his hearing the deceased call out '*dhouro, dhouro*.' Under these circumstances, therefore, I beg to recommend that the law officer's *futwa* of acquittal be set aside, and that the prisoner Alungkar be convicted of being an accomplice in the murder.

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"As there were no eye-witnesses to the fact, and no direct proof exists against the prisoner, except his confession, and there appears to have been a disagreement between the deceased and Mohunlall respecting some property, which the prisoner throughout persisted in accusing the deceased of having stolen, and therefore that the deed was committed under irritated feelings consequent on his alleged loss, I am not disposed to recommend a capital sentence against the prisoner Mohunlall, and would therefore convict both prisoners of being accomplices in the murder of the deceased, and recommend their being sentenced to imprisonment for life in transportation."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.—"The report of the sessions judge contains a very full and accurate account of the facts in this case and of the evidence adduced.

"The first question for consideration is whether the deceased was murdered or committed suicide, as suggested by the prisoner Mohunlall in his defence to the darogah. The fact of the *hansooah* or reaping-hook found by the body belonging to the

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deceased, is the only circumstance in favor of the last supposition. Every other circumstance is against it. The assistant surgeon deposes that the wound in the neck was jagged, as if made by more cuts than one, and that in his opinion it would be impossible for a person to have made such a wound with such an instrument in his own hands.

"There can be no doubt, I think, but that the deceased was murdered: of the actual murder we have but one account, *viz.*, that contained in the confession of Mohunlall to the magistrate. In this the prisoner asserts that he did the deed unaided by any one. All the circumstances of the case point to him as being most likely to have been the principal actor, and although there may be grounds for supposing that he had assistance, I find no satisfactory proof thereof. Murder was not probably contemplated when Alungkar went to call the deceased, the object then was to obtain return of things stolen. I cannot place any reliance on the evidence of Balkee and Inder Sein to seeing the two prisoners and deceased going towards the river before it was light in the morning. They were not obtained as witnesses for many days after the inquiry commenced on the spot. In the month of December natives are not stirring at that early hour, and the witness Balkee, in answer to the question how he recognized them in the dark, replied, 'by their voices.' This is the only proof against Alungkar. His admissions to the magistrate do not amount to a confession of guilt. For these reasons I consider him entitled to an acquittal.

"Of the guilt of Mohunlall there can be no doubt. I convict him of wilful murder on his own confession to the magistrate which has been proved to have been made voluntarily. In this he states that the deceased brought back half the property he had stolen and buried it. To the darogah he was unable to state what articles were wanting and unreturned. Seeing the prisoner the following morning running in a southerly direction, he took the *hansooah*, ran after him, and, when he fell, cut his throat.

"No altercation is said to have occurred; the prisoner must have taken the *husooah* for no other purpose than to use it against the deceased, and the nature of the wound, as described by the assistant surgeon, shows that the murder was committed with determination. I can hardly conceive that, as suggested by the darogah, the prisoner borrowed the deceased's *hansooah* with the intention of giving a colour of truth to a premeditated assertion that suicide had been committed; in fact, that the prisoner prepared his defence before he committed the crime: I think the coincidence must have been the result of accident.

"Without attributing to the prisoner such long premeditation as that suggested by the darogah, I can find no sufficient reason for a mitigated sentence. Were the grounds for mitigation ad-

duced by the sessions judge to be accepted as sound, capital punishment would never be inflicted for a murder perpetrated secretly and in consequence of a disagreement.

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"With the concurrence of another judge, a sentence of death will issue."

PRESENT:

SIR ROBERT BARLOW, BART., *Judge.*

MUCKROO

versus

LALCHUND.

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The prisoner caught in the act of burglary, sentenced, as proposed by the sessions judge, to five years' imprisonment with irons and labor, being his second conviction on a similar charge.

CRIME CHARGED.—Burglary and theft of property valued at Company's rupees 3-2-0.

CRIME ESTABLISHED.—Burglary and theft of property valued at Company's rupees 3-2-0.

Committing Officer, Mr. A. E. Russell, officiating magistrate of Purneah.

Tried before Mr. Francis Lowth, officiating sessions judge of Purneah, on the 26th February 1852.

Remarks by the officiating sessions judge.—"The prosecutor appears to have been awoke from his sleep about the middle of the night in question, 27th December 1851, or 13th Poos 1258 B. S., by the rattling of his plates and dishes, and seeing a man standing in his room jumped out of bed and seized the prisoner. A struggle ensued, during which they both emerged from the door and fell into the court-yard, where the chowkeedar and several neighbours, witnesses who had been roused by the cries of the prosecutor, found them; the prisoner was then taken into custody and a knife found in his girdle. On inspection a hole, sufficient to admit a man, was found to have been dug under the *tattie* wall of the prosecutor's house, whilst two cooking plates were found in the mouth of the hole, and two other articles about two cubits outside of it; the prisoner on being seized appears not to have been recognized by any one, being a stranger, and though he gave his name, specified various places as his residence; the facts of the burglarious entrance having been effected, the finding of the property as above described, and the seizure of the prisoner at the prosecutor's house, were all fully established by the evidence of the chowkeedar and witnesses.

"The prisoner in his defence pleaded that he was sleeping on the night in question at the house of a friend, Khedoo Keoree, in another village, a short distance from that of the prosecutor, but about midnight was obliged to go out to answer a call of nature, and mistaking his way back suddenly found himself near

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the prosecutor's house, where he was seized; he maintained, however, that he had nothing to do with the hole made under the prosecutor's *tattie* wall, and that it must have been done by the prosecutor himself, in order to bring him into trouble, and to screen himself from punishment, for having taken rupees fourteen (14) from the prisoner's person on the occasion; the prisoner further admitted his having offered the prosecutor and others a bribe to let him off, but they refused to accede to his proposal; only one witness Khedoo, above-named, was cited for the defence, and he denied the prisoner's having slept at his house on the night in question.

" The jury returned a verdict of guilty against the prisoner, in which I fully concurred, and considering the prisoner an old offender, having been imprisoned on a former occasion for three (3) years, in a case of burglary and theft, enhanced punishment was awarded."

Sentence passed by the lower court.—Five (5) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—" The sessions judge's statement of the case should show the punishment awarded. The prisoner's petition of appeal gives it as five (5) years' imprisonment with irons and labor. The prisoner was seized on the spot by the prosecutor and others who came to his assistance. He was unknown to them previously. One witness was summoned for the defence, but said nothing in his favor. I confirm the sessions judge's sentence."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

BASSOO MAINTEE (No. 2), GOPAUL MAINTEE (No. 3), PUTTEE MAINTEE (No. 4), BISSEN PAREE (No. 5), ARUT MULLICK (No. 6), MUSST. ZEERA (No. 7) RUGHOO PUTTEE (No. 8) AND BHUGWAN PUNDAH (No. 9).

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The prisoners, who were convicted of murder, being only inferior agents in the commission of the crime, were sentenced each to fourteen years' imprisonment with labor and in irons. The court acquitted three of the prisoners, on the ground that as the magistrate admitted them as witnesses, knowing that they had acknowledged complicity in the murder, it was not right to convert them into an accused party, and use the deposition they gave against themselves.

The court direct attention to the rule contained in Section XLVII. Regulation IX. of 1793.

CRIME CHARGED.—Nos. 2 to 6, 1st count, murder of Bamdeb Maintee, husband of prisoner No. 7; 2nd count, aiding and abetting in the murder of Bamdeb Maintee; and 3rd count, accessaries after the fact by concealing the murder of Bamdeb Maintee from the police on the 26th October 1851. No. 7, accessary to the murder of her husband Bamdeb Maintee after the fact, by concealing her knowledge of the parties who were concerned in his murder from the police on the 26th October 1851. No. 8, accessary after the fact, by concealing his knowledge of the parties who threw the body of Bamdeb Maintee on the bank of the tank called Burturra, until the 6th November 1851, and No. 9, accessary after the fact, by concealing from the police, on the 26th October 1851, his knowledge of the parties who threw the body of Bamdeb Maintee on the bank of the tank of Burturra.

Committing Officer, Mr. A. Forbes, magistrate of Pooree, Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 17th March 1852.

Remarks by the sessions judge.—"It appears that the deceased Bamdeb Maintee was killed on the night of the 23rd, or early in the morning of the 24th of October, and on the afternoon of the 25th, Arut Mullick, (prisoner No. 6,) the chowkeedar of mouza Huntosurrah, in which the deceased resided, gave information at the thanna that Bamdeb Maintee's widow had, the previous evening, sent for Bhaigrutty Chowdry, the zemindar of the village, and informed him that on Thursday, towards the end of the night, some one came to her house and called her husband to go to the buffalo *gôte* or pen, to fetch milk, and that he accompanied him and had not since returned home; and that the voice of the person who called him resembled that of Arut Mullick, *viz.*, himself, the deponent. And on her asking Bhaigrutty Chowdry to ascertain what had become of him, he sent for him, the chowkeedar, and told him what she had said; and he with Bassoo Maintee, (prisoner No. 2,) Gopaul Maintee, (prisoner

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No. 3,) Puttee Maintee, (prisoner No. 4,) and Kelai Kandee searched for him everywhere about the village, but not finding him they went to their houses. And when the chowkeedar went to Bamdeb Maintee's house that morning, (Friday, the 25th,) his wife informed him that a ghost or supernatural being had called her husband away and killed him, and told him to go and search for him on the high ground by the Burturra tank, where people were in the habit of throwing away dead bodies; that, he, with the other persons above-named, then went as directed to the Burturra tank at Oojalpore, where they observed some crows and vultures flying about, and Gopee Puttee, Bhuggee Pundah, and Neela Pundah standing looking at something; and on their asking them what it was, they said that the crows and vultures were eating a dead body, and on going up to it, he recognized the body to be that of Bamdeb Maintee; and they went and communicated the circumstance to his widow, who said she supposed the ghost had killed him, and that she suspected no one else of having done so. On receiving the above information, the darogah deputed the mohurir of the thanna to inquire into the matter, and on the 20th October he reported that the mohurir had returned to the thanna, but he could not learn from his inquiry how the deceased had met with his death, and he had, in consequence, directed him to hold further investigation, and on his return from Dukhin Astrung, where he was about to proceed to inquire into the loss of a salt sloop, he would, after ascertaining the correct manner of his death, transmit the papers. And on the 5th of November, he again reported that on his return from Dukhin Astrung, he found that the mohurir had been unable to go to the spot to hold further inquiry into the case, because he had the *maskeibar*, or monthly statement, to prepare, but that he had summoned all the villagers to the thanna; and having learned from Broond Bhooee (a lad fourteen years of age), a servant of the deceased, that Arut Mullick, Bissen Paree, and others, called the deceased at night to go to the buffalo pen (*gôte*), he had recorded their examinations, and as they denied all about it, he had detained them at the thanna; that on learning this, he himself examined Broond Bhooee, and having inquired well into the case, he had discovered that Arut Mullick Chowkeedar, Bissen Paree, Gopaul Maintee and Bassoo Maintee, Puttee Maintee, Rajbullub Chowdry, and Raghub Maintee had committed the murder; and on his questioning the said persons, some of them had partly confessed and others denied; and he was in consequence himself about to proceed to the spot to investigate the case. And on the 8th November he forwarded the above-named persons with their examinations to the magistrate; and on the 11th idem, submitted his final report.

"The following are abstracts of the confessions made by the prisoners Nos. 2 to 9, before the magistrate; and they correspond

in all material points with the confessions and statements made by them before the police darogah

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" Bassoo Maintee, (the prisoner No. 2,) in his examination recorded on the 10th November 1851, stated that four days prior to the death of Bamdeb Maintee, he and Arut Mullick, (chowkeedar,) Gopaul Maintee, Puttee Maintee, Bissen Paree, and Bamdeb Maintee, had arranged to go together to the buffalo *gôte* or pen to get some milk; and about twenty days ago, on Thursday, towards the end of the night, Arut Mullick, Bissen Paree and Bamdeb Maintee came and called him, and Gopaul Maintee and Puttee Maintee (whose houses are near to his,) to accompany them to fetch the milk, and they all six went together to a short distance from the boundary of the vilage, when they diverged from the road leading direct to the buffalo pen, and went, by direction of Arut Mullick, by the Bisseepohanee *bheel* or fishery; and when they had proceeded about ten paces beyond the said fishery, Rajbullub Chowdry and Rughub Maintee sallied forth from some low jungle, and Rajbullub seized Bamdeb Maintee by the hair, and holding down his head, struck him twice with his fist on the back of his neck, while Raghub, in like manner, struck him several times on the ribs, and Arut Mullick struck him three or four blows with a bamboo stick; that Puttee Maintee then asked him, the prisoner, what they should do; and he replied, that as the zemindar and chowkeedar had joined in beating Bamdeb, they had better abscond, and he, and Puttee Maintee, and Bissen Paree ran away, leaving Gopaul Maintee behind; that next day, they inquired of Gopaul Maintee what had become of Bamdeb, whom they were beating, and he said, that on hearing him groan, he came away; and on Friday evening, Bamdeb's wife sent her servant Bhowree to inquire of Arut Mullick what had become of her husband, as he had not returned home after being called away to fetch milk, but he denied having seen him the previous night. And on Saturday morning, Rutty, *i. e.* Bhaigrutty Chowdry, came to the village, and called together the villagers and the chowkeedar, and asked what had become of Bamdeb, and whether any one had seen him; and all of them having replied that they had not, his wife said that she had dreamed the previous night, that a ghost had killed him by the side of the Burturra tank; and on hearing this, he, the prisoner, went with Arut Mullick, Bissen Paree, Kulai Kundee, Gopaul Maintee and Puttee Maintee, to the place indicated, and there saw a dead body, and Gopee Puttee, the *moquddum* of Oojalpore, with Bhugwan Pundah and Neela Pundah sitting a few *haths* from it; and that on those persons asking them whose body it was, they said it was Bamdeb Maintee's; that they then returned and acquainted the zemindar and Bamdeb's wife of their having found the

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body, and the former sent the chowkeedar to give information at the thanna, and the mohurir came, accompanied by a burkundauz, and investigated the case, and afterwards, when the darogah came, he, the prisoner, communicated to him what he has stated above, and he was forwarded to the magistrate. He further stated, on being questioned, that he was going to communicate the above information to the mohurir, but Rajbullub Chowdry prohibited him, saying that he, the prisoner, had not beat the deceased, and that he was to state in like manner as the deceased's wife, that a ghost had killed him, &c.

"Gopaul Maintee, (prisoner No. 3,) in his examination, recorded on the 10th November 1851, stated that about four days after the *koomar poornummee* festival, as he was going to weed his field, he saw Arut Mullick, Puttee Maintee and Rajbullub Chowdry at the field of Arut Mullick, and Rajbullub Chowdry addressed him, saying, 'ah friend! come here;' and on his joining them, they all went to Arut Mullick's house, and while they were sitting there, Rajbullub said he had an enemy, and told them to put an end to him, that on hearing this, he, the prisoner, asked him who was his enemy, he being zemindar! and he said that Bamdeb Maintee had caused him to be imprisoned and fined, and had also got his father once confined in jail, and he would now break one of his legs and arms; that the prisoner then informed him that he was going to Bengal, and asked where he was to get money, if there was a *mokuddumma?* and Rajbullub replied, that Arut Mullick was to manage the business, and he, Rajbullub, would pay all the expenses—all that he, the prisoner, was required to do, was to accompany them; that after this Arut Mullick said that if he did not lay his hands on *mahapersaud*, he could not place confidence in him; and he then brought some *mahapersaud* from his house, and he, the prisoner, together with Puttee Maintee, Rajbullub Chowdry and Arut Mullick, all swore to accompany each other, and it having been suggested by Arut Mullick, that they should call Bamdeb Maintee on pretence of going to fetch milk from the buffalo pen, Rajbullub said that his associate Bassoo Maintee would also accompany them, and they all then went home; afterwards on the day preceding the *amaus* or *dewalee* festival, when he, the prisoner, was sitting in the evening in company with Bissen Paree, Bassoo Maintee, Puttee Maintee and Bamdeb Maintee, at his own door, Arut Mullick came up and addressed him, the prisoner, saying, *Bewartah*, let us go and fetch the milk; and on hearing him Bamdeb said that the plantains had been blown down in the *mahadeb's* garden, and if they brought some milk they would make an offering to the *mahadeb;* and though he, the prisoner, at first refused to go, on Bamdeb Maintee's saying that if he would not accompany them, none of the party would

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go, he consented; and towards the end of the night, Arut Mullick brought Bamdeb Maintee and Bissen Paree to his house, and called him and Puttee Maintee and Bassoo Maintee, and they all six set out to fetch the milk from the buffalo pen, but when they had reached the end of the lower hollow ground, where the road branches in two different directions, they left the one leading towards the buffalo pen, and proceeded, by the direction of Arut Mullick, by the Bisseepohanee *bheel*, a fishery, where, he said, he had placed a net, which he wished to see, and after they had looked at the net and gone twenty paces further on, Rajbullub Chowdry and Raghub Maintee suddenly made their appearance from the low jungle, and the former of them seized Bamdeb Maintee by the hair and held his head down, while Raghub struck him two blows with his fists on the ribs, and Arut Mullick struck him twice with a bamboo stick about his loins, and he fell to the ground speechless; and after this he, the prisoner, looked behind, and having found that Bassoo Maintee, Kissen Paree and Puttee Maintee had ran away, he also absconded. The rest of his statement relative to the finding of Bamdeb Maintee's body, and the assertion of his widow that he had been killed by a ghost, is the same as that of the preceding prisoner, Bassoo Maintee. He also asserted, that he kept the above facts secret from the thanna mohurir, because he was directed to do so by Rajbullub Chowdry.

"Puttee Maintee, (prisoner No. 4,) stated in his examination, recorded on the 10th November 1851, that on Thursday evening, the day before the *amaus* or *dewalee* festival, he and Gopaul Maintee, Bissen Paree, Bassoo Maintee and Bamdeb Maintee were sitting at Bassoo Maintee's door, when Arut Mullick came up and asked Bamdeb Maintee why he did not pay him the four annas which he owed him, and he said he would give them next day; that Arut Mullick then said he had told the *gowala* to give him some milk, and asked Bamdeb whether he would accompany him to fetch it, and Bamdeb said that if they all went, he would go also, and they all agreed to go; Bamdeb Maintee then told Arut Mullick Chowkeedar to call them all up and they would go; and they afterwards dispersed to their own houses, and a short time before day-break Arut Mullick called Bissen Paree, Bamdeb Maintee, Gopaul Maintee and Bassoo Maintee, and he afterwards called him, the prisoner, and he accompanied them; and on reaching the road at the confines of the village leading to the buffalo pen, he said to them, this is the road, where are you going? On which Arut Mullick replied that he was first going to see his fishing net, and they went to the head of the Bisseepohanee *bheel* where the net was, and after looking at it, Arut said that he would take the fish on his return from the *gôte*; and when they had proceeded on, about ten paces,

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Rajbullub Chowdry and Raghub Maintee came out of the jungle, and the former seized Bamdeb Maintee by the hair and struck him with his fist on the back of his neck, and took his stick from his hand and gave it to Raghub, who also struck him with his fists on his ribs, and Arut struck him several blows across the loins and sides; and on his calling out that they were killing him, he, the prisoner, with Bissen Paree and Bassoo Maintee retreated a short distance, and he asked Bassoo what was to be done, the chowkeedar and zemindar were the parties who beat him, what could they do? and having resolved to go home, they absconded. That next evening the deceased's wife told him that her husband had not returned home, and on her asking the chowkeedar (Arut Mullick) about him, he said he had not called him to fetch milk, and asked him, the prisoner, to call Bhaigrutty Chowdry; and he then went and informed him that Bamdeb's wife had said that Arut Mullick had called away her husband during the night to fetch milk, and that he had not since returned home; and he said that it was then night, he would inquire the following day; and he, the prisoner, then went home. The rest of his statement relates to deceased's widow having stated that a ghost had killed her husband by the Burturra tank, and to his, the prisoner's, having gone to the said place with the chowkeedar, and there found the body. He, however, on being questioned further, admitted that four or five days after the *koomar poornummee* festival, he went to get some *dhan* from Rajbullub Chowdry, and was taken by him to Arut Mullick's house, where they were joined by Gopaul Maintee, and that Rajbullub then plotted to kill him, because he on former occasions got him and his father imprisoned and fined, and they had recently had a dispute about a cow; and on his refusing to have anything to say to the matter, Rajbullub said that the chowkeedar Arut Mullick would beat him, and all that he, the prisoner, would have to do, was to be present; and Arut Mullick then administered *mahapersaud* to them, and made them promise not in any way to assist Bamdeb, and he added, that he did not communicate the above circumstances to the thanna mohurir, because Rajbullub Chowdry forbid his doing so.

" Bissen Paree, (prisoner No. 5,) in his examination, recorded on the 10th November 1851, made a statement so exactly similar to those of the other prisoners, and more especially to that of Puttee Maintee, (prisoner No. 4,) that it is needless to recapitulate it. All that appears necessary to mention is, that he asserted that he informed Rajbullub Chowdry that he intended to tell what he knew regarding Bamdeb Maintee's murder when the thanna people came, and he said, why should he tell? he, the prisoner, had not beat him, and if it was necessary, he, Rajbullub, would spend twenty or twenty-five rupees and arrange matters, and

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when the mohurir came, the people told him the ghost story, and he, after inspecting the body, told Rajbullub Chowdry he might burn or bury it as he pleased, and when he was taken to the thanna he told the darogah all he knew. He further stated that Rajbullub Chowdry had in his presence, about fifteen days before the murder, threatened to break Bamdeb Maintee's arms and legs, because he demanded the restoration of a cow which had been seven years in the said Chowdry's house.

"Arut Mullick Chowkeedar, (prisoner No. 6,) in his examination, recorded on the 11th November 1851, stated that on Thursday evening, the day before the *amaus* or *dewalee poojah*, he went to the house of Bassoo Maintee, where Bassoo Maintee, Gopaul Maintee and Puttee Maintee were sitting talking, and on his arrival was asked by Bamdeb Maintee where he was going, and on his telling him that he was going to the Bisseepohanee fishing bund, they said that they were going to fetch milk and asked him to accompany them, but he declined, saying that he was unwell; that they then told him to call them up when he went his rounds, as the plantains were decaying, and they would mix them with milk and make an offering of them to the *mahadeb;* and he promised that if he was well and free from fever he would call them, and then went home, and that at one *puhur* of the night, or 3 o'clock in the morning, he called Bassoo Maintee, Gopaul Maintee and Puttee Maintee, who told him to call Bamdeb Maintee, which he did, and also Bissen Paree, and they all went and sat in Bassoo Maintee's verandah, and having got an earthen vessel from his house, they all, with the exception of Gopaul Maintee, went together to the confines of the village where the two roads meet, and were there joined by the said Gopaul Maintee, who proceeded by the upper road, and all the rest of them went by the lower or Bisseepohanee road to his net, when he took his fish and went home, and Bassoo Maintee and the others went in the direction of the buffalo pens. And on Friday evening, Bamdeb's wife sent to inquire of him why her husband had not returned home, since he called him to go and fetch milk, and he told her servant that he went along with the other villagers, but he, the chowkeedar, did not accompany them, and as he was going into the village in the evening, he would go and see his mistress; that at about 7 o'clock he went into the village, and inquired of Gopaul Maintee and the others what had become of Bamdeb, and they said, that being unsuccessful in getting any milk, they returned home, and Bamdeb went to mouza Koondra; that he then asked why he had not returned home thence, and said that if he did not make his appearance during the day, he would lodge information against them at the thanna, and they told him not to tell any one that he had accompanied them to fetch milk; that he had quarrelled

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with them, and they struck him a couple of blows and he died; and they repeated their request that he would not tell any one, and added that Bamdeb's wife was single or friendless and could not make *durbar*; that he then asked them what they had done with his body and whether they had killed him of their own accord or any one else told them to do so, and they replied that they had thrown his body away at the borders of Bedpore, and that they killed him by order of Rajbullub Chowdry, who made them swear they would tell no one, and he then went home. And on Saturday, when Rutty or Bhaigrutty Chowdry came to inquire what had become of Bamdeb Maintee, all the villagers said they did not know, and he, the chowkeedar, denied having called him to fetch milk, and his wife said she heard a voice like that of Arut Mullick (the prisoner) call him, and he was not now to be found, and that she imagined that a ghost had killed him by the Burturra *hoora*, and on the zemindar's deputing him, the chowkeedar, and others to the place indicated, they saw Bhugwan Pundah and others standing looking at a dead body, which they said they were unable to identify; and on his going up to it, he recognized it to be Bamdeb Maintee's. He also stated that Bissen Paree, Gopaul Maintee, Bassoo Maintee and Puttee Maintee had been tutored by some one to say that he and Rajbullub Chowdry and Raghub Maintee had killed him, and he did not communicate to the mohurir what the above four persons told him because they forbid his doing so.

" Musst. Zeera, widow of Bamdeb Maintee, (prisoner No. 7,) in her examination, recorded on the 9th December, stated, as she had previously done when examined on oath before the magistrate, that she through fear, at the tutoring of Rajbullub Chowdry and Raghub Maintee, told the thanna mohurir that her husband had been killed by a ghost, and that Arut Mullick, Rajbullub Chowdry and Raghub Maintee told her that they had called her husband to fetch milk, and they struck him two blows and he died; that what had happened could not be remedied and she was not to tell any one, and they would give her twenty rupees, provide her with maintenance as long as she lived, and get her daughter married, and likewise defray the expenses to be incurred in the performance of her husband's funeral rites; and as she was a woman, and unable to make *durbar*, she assented to what they told her, though they used no threats towards her.

" Rughoo Puttee, (prisoner No. 8,) in his examination, recorded on the 14th November, after he had been warned that he was charged as accessary after the fact, also stated in like manner as he had previously deposed on oath before the magistrate, that on the day before the *amaus* or *dewalee*, towards the end of Thursday night, or 4 A. M., he, with Bhugwan Pundah, went to fetch milk for the purpose of performing the *sradh* of his ancestors, and as

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they were proceeding on their way between the *dhan* and *kulye* fields, they saw three men at a distance pulling something along the ground, and at the suggestion of Bhugwan Pundah they stopped until the said persons arrived within about forty *haths* of them, and then went and concealed themselves behind some jungle; and as the three persons passed, he recognized Rajbullub Chowdry, Raghub Maintee and Arut Mullick, and observed that they were pulling a dead body without any clothing on it; and about the distance of three *haths* from where they were concealed, they threw it into the jungle, where they kicked and poked the body with a stick, and heaped abuse on the deceased, saying, among other things, '*gheeari poo bama moodaie, ei dunda* '*repuri koolee toolee khaothao*,' *i. e.*, 'enemy Bamdeb, illegitimate 'son of your mother, lie here and subsist by gathering jungle 'berries.' And after they had gone about twenty *haths* from the body, he asked Bhugwan Pundah whether he should call to them, and he said if he did, they would attack them; but he nevertheless called out to Rajbullub Chowdry and Arut Mullick, and asked them by name what they had been about; but they made no reply, and went away in the same direction as that which they came from, and when he, the prisoner, turned round, he found that his companion Bhugwan Pundah had run away to a short distance from him, and he followed him, and they went to his, the prisoner's, house, where they sat till daylight, when Bhugwan went home, and he told him not to tell any of the villagers what he had seen, but when the Government officers came, they would tell them. And on his being asked by the inmates of his house why he had not brought the milk, he said he was unable to discover the buffalo pen. And on Friday, as he was going to bathe in the tank, at about 10 o'clock in the day, he met Raghub Maintee with a pellet bow in his hand, and on asking him what he was about, he replied that he was driving away the monkeys, and he then went to bathe and Raghub followed him, and as he was sitting brushing his teeth, he called him saying that his brother had sent for him; and on his asking which of his brothers called him, he replied it was Rajbullub, and that he was sitting at the north of the tank; that he then told him he would not go near such murderers, to tell his brother to come to him; and he came and took him by the hand, and after placing some *mahapersaud* in it, he and Raghub fell at his feet and begged him to save them and their families; and he replied that he was neither *thakoor* nor *hakim* that he could save them, but if he removed the dead body to his own, or some one else's boundary, he would not tell any one; but he said he could not remove it in the day time, and would take it away at night, and in reply to this, he, the prisoner, told him that if he did not take it away, he would certainly inform against him, and having said this went home; that on

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the following day, Sunday, the thanna mohurir came, but he did not send for him, the prisoner, or any one else, and having been told by Bamdeb Maintee's wife and other people that Bamdeb had been killed by a ghost, he went away; but when the darogah came to the village twelve days afterwards and summoned him and others, he communicated to him all that he knew, but he told no one else.

"Bhugwan Pundah, in his examination before the magistrate on the 14th November, also made the same statement as he had previously done on oath; and his statements being exactly similar to those of Rughoo Puttee, it is unnecessary to recapitulate them. He, however, stated in addition, that as he and Gopee Puttee and Neela Pundah were looking at their fields the day after the occurrence, they observed the crows and vultures hovering round something, and that on going up to it discovered it was a human body; and while they were engaged looking at it, Arut Mullick and his party arrived, and recognized it to be Bamdeb Maintee's body, and when the thanna mohurir came and summoned him, he did not tell him about the scene he had witnessed at night with Rughoo Puttee, nor did he tell Gopee Puttee or Neela Pundah, because Rughoo Puttee and Rajbullub Chowdry were friends, and Rughoo Puttee had not told any one.

"The evidence on the part of the prosecution, deprived of the testimony of Musst. Zeera, the wife of the deceased, and Rughoo Puttee and Bhugwan Pundah, who, as above-stated, after having deposed on oath or solemn declaration before the magistrate, were committed as accessaries after the fact of the murder, stands as follows:

"Witness No. 1 speaks merely to the arrest of the prisoners.

"Gopee Puttee, witness No. 3, brother to Rughoo Puttee, the prisoner No. 8, deposed to having gone on Saturday, in company with Bhugwan Pundah, the prisoner No. 9, and Neela Pundah, to see his *kulye* field, and to their attention having been attracted by the crows and vultures in the direction of the Burturra *hoora*, where they went and saw a dead body, and also to the five prisoners, Nos. 2 to 6, having afterwards come to the spot and recognized the body to be that of Bamdeb Maintee; and to Arut Mullick Chowkeedar having at that time informed him that he came in search of the body, in consequence of Bamdeb Maintee's wife having said that she had dreamed, or seen in her sleep, a person like himself, the chowkeedar, call her husband away from his house, and told him to look for him at the Burturra tank. He further stated that he was present when the confessions of the prisoners Nos. 2 to 5, and the examination of No. 6 were recorded in the presence of the thanna darogah, and that Musst. Zeera, (prisoner No. 7,) in his hearing, told the thanna mohurir, that she had dreamed that a ghost had killed her husband and

thrown his body by the Burturra tank, and that before the darogah she had said that the Chowdry and his two sons killed him and promised to give her rupees twenty and get her daughter married, &c., if she would say that a ghost had carried him off, and that she, in consequence, denied or told the ghost story to the mohurir. This witness was likewise present when the mohurir went to inspect the body of the deceased at the Burturra tank, which is about a quarter of a mile from the deceased's house, and one *batty* or twenty *beegahs* from that of Bhaigrutty Chowdry.

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"Witnesses Nos. 3 and 4 deposed to having accompanied the thanna mohurir to inspect the body of the deceased, which they stated was in a decomposed state, and had been partially eaten by vultures and crows, and that they observed no marks of violence on it. Also that Musst. Zeera in their presence told the mohurir, that a person, whose voice resembled that of Arut Mullick Chowkeedar, called her husband away from his house, at about 3 o'clock, after which he did not return home; and that a woman appeared before her in a dream, and informed her that a ghost had killed him by the Burturra tank. Witnesses Nos. 2 and 3 likewise said that they had heard that a quarrel had existed between the deceased and Bhaigrutty Chowdry and his sons.

"Witnesses Nos. 6 and 10 deposed to having heard the deceased say a few days before his death, that the prisoner No. 6, and also Rajbullub Chowdry and Raghub Maintee had threatened to beat him, and witnesses Nos. 11 and 12, to the finding of the body.

"Witnesses Nos. 2, 5 and 6 deposed to the Mofussil confessions of Nos. 2 to 6, and witnesses Nos. 7 and 8, to the foujdaree confessions of all the prisoners having been voluntarily made.

"Before this court the prisoners Nos. 2, 3, 4 and 5 pleaded generally 'not guilty' to the first and second counts, but admitted having been present when the deceased was beat, and confirmed the statements previously made by them before the police and the magistrate.

"Arut Mullick, (prisoner No. 6,) pleaded 'not guilty' to all three counts, and in a somewhat confused answer denied either calling, or accompanying the deceased and the other prisoners to go to fetch milk, but stated that on his going into the village carrying his fish with him the evening previous to the *amaus* or *dewalee*, he heard the deceased asking the prisoners Nos. 2 to 5 to accompany him to fetch milk from the *gowalas* at Bulram Buleaput; and that on Bamdeb Maintee's wife sending Bhowree Chokra to call him the following day, and telling him that her husband had been called away from his house, a little before daylight, on the previous day to fetch milk, and

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had not returned home, he told her that he had seen him talking to the prisoners, and she said she had asked them about her husband, and that they denied having gone to fetch milk; and he, the prisoner, himself then went and inquired of Bassoo Maintee and the other villagers who had been asked by Bamdeb Maintee the previous evening to go and fetch milk, and they denied having accompanied him. But after the police darogah directed him to ascertain the particulars connected with Bamdeb Maintee's death, at about 7 o'clock in the evening, he heard the same prisoners talking in a house belonging to the prisoner No. 4, about their having killed the deceased, and saying among themselves that they were not to mention the circumstance to any one; and on his interrupting them, and asking them what they were consulting about, they all absconded by the back door; and on his meeting them the next day, Bissen Paree, after much questioning, admitted that they called Bamdeb Maintee and beat him; but the others persisted in denying. However when the darogah sent for them, they, at the tutoring of some person, stated that he, the prisoner, and Rajbullub Chowdry, and Raghub Maintee killed him, but he neither killed him nor saw him beat, as falsely stated by the other prisoners. The rest of his statement corresponds with that which he made before the magistrate.

"Musst. Zeera, (prisoner No. 7,) pleaded 'not guilty' to the charge preferred against her, and stated that Rajbullub Chowdry, Raghub Maintee and Arut Mullick Chowkeedar consulted together and called her husband on pretence of fetching milk and killed him, and threw his body at the Burturra *hoora*, and next day informed her that he had been killed by a ghost, and not having at that time been told by any one else that they had killed him, she did not tell the mohurir, and when she became aware of their having done so, she charged them with committing the murder.

"Rughoo Puttee, (prisoner No. 8,) denied that he concealed anything, and stated that he communicated all he knew to the darogah and likewise to the magistrate, but when he had given his evidence before the magistrate, Muddun Dass, a mohurir of the court, and two *mookhtars* who are connected with Raghub Maintee, made some representation to the magistrate, and he made him defendant instead of witness.

"Bhugwan Pundah, (prisoner No. 9,) stated that in consequence of the zemindar and all the villagers having told the thanna mohurir that a ghost had killed the deceased, he was afraid to tell the mohurir what he had witnessed; but when the darogah came, he communicated all he knew.

"None of the prisoners called any witnesses in their defence, except Nos. 8 and 9, who merely cited witnesses to their character; and those witnesses stated them to be persons of respec-

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tability, and not likely to make false statements or accusations against others.

"The *futwa* of the law officer acquits the prisoners Bassoo Maintee, No. 2, Gopaul Maintee, No. 3, Puttee Maintee, No. 4, Bissen Paree No. 5, and Arut Mullick No. 6, of the first count, and convicts them on the second and third counts, *viz.*, the prisoners Nos. 2 to 5, on the grounds of their confessions before the police and the magistrate and likewise before this court, to the effect that Rajbullub Chowdry and Raghub Maintee, in consequence of quarrels and enmity existing between them and the deceased, consulted with the said prisoners and Arut Mullick, (prisoner No. 6,) to call the deceased to fetch milk, and that on the night of the occurrence they all took the deceased along with them, and that they saw the said Rajbullub Chowdry, Raghub Maintee and Arut Mullick beat him; and that when he was almost killed they absconded; and because, up to the 26th of October, they did not communicate the circumstance to any one, and Arut Mullick, (the prisoner No. 6,) because, notwithstanding he in his examination before the police and the magistrate, denied having gone to the place of occurrence, and affirmed that after accompanying the others a short distance, he returned home and witnessed no beating, he, contrary thereto, stated before this court, that he did not go any part of the way with the other prisoners; and it was clearly inferrible from the circumstances of the case, that he went with them to the place where the murder took place. And with regard to the prisoners Nos. 7, 8 and 9, it declares that as it appeared from their confessions that Musst. Zeera (No. 7,) at first concealed the murder of her husband through ignorance, or in consequence of having been tutored by Rajbullub Chowdry and Raghub Maintee, and that Rughoo Puttee (No. 8,) and Bhugwan Pundah (No. 9,) who merely stated that they saw the deceased's body thrown away, and they did not at first of their own accord give information of what they had witnessed to the police, had subsequently communicated the real facts of the case to the darogah, and there was no other evidence that they concealed their knowledge of the murder, saving their own confessions; the said confessions were not sufficient to inculpate them, and consequently that none of the three counts was established against them. It also declared, with reference to the weapon with which the deceased was beat, and the fact of the principals not having been apprehended, that according to the Mahomedan law the crime of aiding and abetting in the *homicide* only, of Bamdeb Maintee had been established, and that *deeyut* was barred; and that the prisoners Nos. 2 to 6 were liable to punishment by *akoobut* only.

"But in the above verdict I cannot altogether concur, either as respects the entire acquittal of the prisoners Nos. 7, 8 and

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9, or the nature of the crime established against the other prisoners Nos. 2 to 6. For although, as recorded in my Vernacular proceeding of the 8th January last, which will be found with the record, the admissions of the whole of the prisoners Nos. 2 to 9, and likewise the general circumstances of the case, have created the strongest suspicion in my mind that Rajbullub Chowdry and Raghub Maintee were the principal instigators and perpetrators of the murder of Bamdeb Maintee, and I, in consequence, directed the magistrate to admit the prisoners Musst. Zeera, (No. 7,) Rughoo Puttee, (No. 8,) and Bhugwan Pundah, (No. 9,) who were only made defendants in the case by the magistrate after they had been examined on oath and had stated the whole of the circumstances attending the murder which had come to their knowledge, as king's evidence, and commit the said Rajbullub Chowdry and Raghub Maintee on a charge of wilful murder to the sessions, (which said order was quashed on a reference to the superior court, by whom it was ruled that this court had no jurisdiction over the proceedings of the magistrate in such cases, and possessed no power to direct the commitment of parties whom the magistrate had acquitted.) I do not, as their evidence could not be made available in compassing the conviction of the said persons, consider them altogether guiltless or deserving of acquittal; for there is no doubt, that they all for a time concealed their knowledge of certain circumstances attending the murder, which, had they in the first instance disclosed to the police, might have led to the conviction of the principals; and they are consequently guilty of the crime of privity to the murder of Bamdeb Maintee, according to the court's construction of that offence recorded in their Circular No 8 of the 7th June 1847, and their decision, No. 278, dated the 4th ultimo, on the reference which arose out of the present case. But with regard to the fact above-mentioned, of their having been admitted to give evidence on oath before the magistrate and their having then stated all that they were cognizant of regarding the murder, I think their offence may be viewed more leniently than it otherwise might have been.

" As to the conviction of the other prisoners Nos. 2 to 6, I fully concur, and it is only as respects the nature of the crime of which they stand convicted, that I differ in opinion from the law officer; for I consider the manner and circumstances attending the death of Bamdeb Maintee, render that crime one of wilful murder, and not of homicide only. And from the particulars related by Gopaul Maintee, (prisoner No. 3,) it is to be inferred that all the prisoners knew that the deceased was called up from his house in the dead of the night, on pretence of going to fetch milk, but in reality for the purpose of being killed; I would therefore convict the said prisoners, Bassoo Maintee, (No. 2,) Gopaul Maintee, (No.

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3,) Puttee Maintee, (No. 4,) Bissen Paree, (No. 5,) and Arut Mullick, (No. 6,) on their own confessions of aiding and abetting in the wilful murder of Bamdeb Maintee, and sentence them each, under the circumstances, of the case (none of them having admitted that they themselves beat him,) to fourteen (14) years' imprisonment with labor in irons, and Musst. Zeera, (No. 7,) who being the wife of the deceased, was no doubt deterred through fear of the zemindar and his sons from telling what she knew about the disappearance of her husband, I would sentence to six (6) months; and Rughoo Puttee, (No. 8,) and Bhugwan Pundah, (No. 9,) to two (2) years' imprisonment."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"I agree with the sessions judge, that the instigators and perpetrators of this murder were other parties, who have not been put on their trial.

"The confessions of the prisoners indicate Rajbullub Chowdry and Raghub Maintee, the sons of the zemindar of the village, as the principals in the murder, and it would appear from the evidence, that they bore enmity towards the deceased, in consequence of his having caused them to be punished by the magistrate, and of the deceased being about to bring a fresh complaint against the former for wrongfully detaining his cow. The circumstances of the case certainly raise a strong suspicion against them, and I think the magistrate would have exercised a sounder discretion, if he had, after the correspondence* which passed between this court and the sessions judge, regarding the competency of a sessions judge to tender a pardon to persons, with a view to the conviction of persons not on trial before them,

* *Question.*—"Whether, when the magistrate has not committed two persons from want of evidence, the judge is competent to direct the magistrate to commit those two persons on the evidence of three accessaries to the murder?

Court's reply.—"On the 3rd question, the court observe, that a sessions judge is not competent to direct, excepting in cases of perjury, a magistrate to commit, upon whatever evidence, a person, whom the magistrate does not think that there are grounds for committing. The power of the sessions judge extends only to calling for fresh evidence,* in regard to prisoners on trial before him. By Clause 2, Section II., Regulation VIII. of 1830, a magistrate is authorized to release prisoners on his own judgment, if he does not think that, on all the evidence against them, there is a reasonable probability of a legal conviction. A sessions judge has no authority, like that of a public prosecutor, and no general superintendence over the proceedings of the magistrates, though he may of course intimate to a magistrate his opinion of the propriety of sifting all the evidence against any person not committed, and of considering whether he should not be sent up for trial."

* This does not of course affect the power of a sessions judge to direct re-commitment of a prisoner committed before him on a different charge, as expressed in the Circular Order, No. 18, of the 14th November 1851.

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admitted the prisoners Nos. 7, 8 and 9, as evidence, and arraigned the principals, and it was, I think, the more incumbent on him to adopt the suggestion as he had wrongfully made the prisoners to give evidence on a charge in which they themselves were implicated.

"The only evidence against the prisoners is their own attested confessions before the police and the magistrate, and their admissions on the trial. The prisoners Bassoo Maintee, (No. 2,) Gopaul Maintee, (No. 3,) Puttee Maintee, (No. 4,) and Bissen Paree, (No. 5,) confess that by a preconcerted arrangement they left the village in company with the deceased, and the prisoner Arut Mullick, under the pretence of procuring milk, but instead of taking the direct path to the buffalo pens, they proceeded by the Bishen Paree fishery, and that shortly after passing it, Rajbullub Chowdry and Raghub Maintee, rushed out of some low jungle and, joined by Arut Mullick, severely assaulted the deceased. The prisoners state that they did not strike the deceased. The whole account which they give of the transaction must be taken together, and the tenor of their police and Mofussil confessions clearly imply that the intent was to kill the deceased, but they were, there is every reason to believe, inferior agents in the murder, and convicting them therefore of being accomplices in the same, I sentence them, each to be imprisoned with labor and in irons for fourteen (14) years.

"Arut Mullick admits complicity in the act, before and after its perpetration. He admits that he was aware of the design to kill the deceased, and acknowledges that the other prisoners informed him they had killed him; he concealed the felony and, with the view of screening the offenders from justice, he falsely reported to the police that a ghost had called away the deceased and killed him. Convicting him of being an accessary before and after the fact, I sentence him also to fourteen (14) years' imprisonment with labor and in irons.

"The prisoners Nos. 7, 8 and 9 were sent in by the darogah as witnesses, though they admitted their privity to the murder. They were admitted as witnesses by the magistrate and examined on oath. They deposed that they knew of the felony and did not discover it.

"The magistrate, distrusting their evidence, arraigned them on the charge of privity. In answer to the charge they repeated what they had stated on oath, though warned that they were made defendants, and it is on this answer alone that they are convicted.

"It is the general practice in Scotland for the crown to indict no person, from whom a deposition has been taken, on a criminal charge. See Alison's Practice of the Criminal Law of Scotland, page 368. In England and Ireland prisoners are

protected by statute, but unless so protected, the statement of a prisoner, on being examined as a witness, may be used against himself for all purposes. See Tayler on Evidence, page 611. The practice of our courts seems to have been not to use the depositions of a witness given on oath against himself, though he may be arraigned on a crime admitted in the deposition, provided it be proved by other evidence. See vol. II. of Nizamut Adawlut Reports, page 14. This is a just rule and well suited in my opinion to the exigencies of the country and the state of the people. There is no other evidence against these prisoners in this case, excepting their confessions, which, as they had been compelled to criminate themselves on oath, it was almost necessary for them to make; and as the magistrate admitted them as witnesses, knowing that they were cognizant of the felony, it was not right to convert them into an accused party. I am of opinion that they are entitled to their release, and direct they be released accordingly.

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"The sessions judge has recorded the answers of the prisoners at length, before taking the evidence on the part of the prosecution. He is desired to attend to the rule contained in Section XLVII. Regulation IX. of 1793."

PRESENT:

SIR ROBERT BARLOW, BART., *Judge.*

MUSST. ROBIJAH

versus

MEAJAN (No. 11), TOMIZOODDIN (No. 12), WUKILOODDIN (No. 13), PHELAN MOONSHEE (No. 14), WUZIROODDEEN (No. 15), RUBBIOOLLAH (No. 16), AHMUD (No. 17), RUHIMOODDEEN (No. 18) AND MORAD HOWLADAR (No. 19).

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Conviction and sentence passed upon the prisoners by the sessions judge, affirmed.

CRIME CHARGED.—Nos. 11, 12 and 13, wilful murder of Usgur Meerah, and Nos. 14, 15, 16, 17, 18 and 19, concealing the above crime by interring the body of the deceased Usgur Meerah, on the 5th October 1851.

CRIME ESTABLISHED.—Nos. 11, 12 and 13, accomplices in culpable homicide, and Nos. 14, 15, 16, 17, 18 and 19, concealing the case of culpable homicide.

Committing Officer, Mr. H. C. Halkett, magistrate of Backergunge.

Tried before Mr. W. J. H. Money, sessions judge of Backergunge, on the 20th December 1851.

Remarks by the sessions judge.—"The prosecutrix, wife of the deceased, deposed that, on the day after the *dussurrah*, month and date not remembered, on a Sunday night (which appears to

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have been the 20th Assin,) about six *ghurries* of the night, her husband remarked that their daughter's jewels had been pledged for the payment of the rent of a *howlah* belonging to the mother-in-law of prisoner No. 11, and had not been released; that upon making this remark he went out in the direction of prisoner No. 11's house; that about one *ghurrie* of the night remaining, she was called by her husband, who was outside the house in a distressed condition, in a state of nudity, with his eyes closed, and his sides bruised; that, in answer to her inquiries, he mentioned there had been a dispute about the money with prisoner No. 11, Meajan, who, as well as prisoner No. 12, Tomizooddin, and prisoner No. 13, Wukilooddin, had beaten him and thrown him down; that her husband died on the Tuesday, from the effects of his ill-treatment, and after his death prisoner No. 14, Phelan Moonshee, came to bury his corpse, which she resisted, wishing to give information to the thanna; that on the Wednesday, after she had sent information to the thanna, about 12 o'clock, Phelan Moonshee and others, amongst whom she recognized prisoners Nos. 17 and 19, Ahmud and Morad, came and forcibly removed her husband's corpse and buried it. The prosecutrix had heard of an intrigue existing between her husband and Judoojah, the mother-in-law of prisoner No. 11, on which account the rent had been paid. The deceased was stated to be about forty years of age, and in good health. The prisoners denied the charges on which they were arraigned in this court. In the Mofussil and before the magistrate prisoner No. 11, Meajan, alluded to the deceased annoying him about rent of a *howlah*, and making him leave his mother-in-law's premises, and his determination, in concert with prisoners Nos. 12 and 13, and another man Aminooddin (witness No. 10 in this case,) who were also annoyed by the deceased about their rent, to punish him; and admitted, on the night in question, in conjunction with those persons, beating the deceased with their fists and elbows, and binding him in a cloth and carrying him in a senseless state, and throwing him down near his own house. Prisoners Nos. 12 and 13, Tomizooddin and Wukilooddin, also in the Mofussil and before the magistrate, alluded to the deceased annoying them about their rent, and then beating him as described, in conjunction with prisoner No. 11, Meajan, and Aminooddin. Witness No. 1, Sheikh Usgur, deposed that in the month of Assin last, date not remembered, on a Sunday night, about one and a half *puhurs*, he heard a noise in the direction of Buxoollah Howladar's house, and, in company with witness No. 2, Mahomed Hossein, went towards the spot, and saw, by the light of the moon, prisoner No. 11 Meajan, No. 12, Tomizooddin and No. 13, Wukilooddin, beating the deceased with their fists, elbows and feet, and then bind him in a cloth and carry him off towards his house. He then heard that the deceased died on the Tuesday, from the effects of the ill-treatment,

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and that on the Wednesday, Phelan Moonshee and others had buried his corpse. The evidence of witness No. 2, Mahomed Hossein, was to the same effect. Witness No. 10, Aminooddin, deposed to his having heard from witness No. 16, Doolubbee Bewah, on the Monday morning, in the month of Assin last, of what had occurred; to his proceeding to the deceased's residence and seeing him with bruises on his thigh and sides; to his dying on the Tuesday, from the effects of his wounds, and to his (witness's) giving information to the thanna on the Saturday. He mentioned the intimacy which existed between the deceased and the mother-in-law of prisoner No. 11, whom the deceased had turned out of her house about six months previously. Witness No. 11, Gyeasooddin, deposed to his having distinguished prisoners Nos. 12 and 13 by their voices, passing by his field on the Sunday night in question, and the next morning seeing the deceased in his house with bruises on his elbows and sides, and right thigh. Witness No. 12, Amiroonissa, daughter of the deceased, corroborated the evidence of her mother, the prosecutrix; witness No. 13, Ledoo, deposed to the fact of prisoners Nos. 12 and 13, coming to his house on the Sunday night alluded to in Assin last, and saying they were going to the house of prisoner No. 11; to his hearing the next morning what had occurred, and proceeding to the deceased's house, whom he saw with bruises on his body; to the deceased saying, in answer to inquiries, that prisoners Nos. 11, 12 and 13, had beaten him. Witness No. 14, Dowlut Sheriff, witness No. 15, Edrak, and witness No. 16, Doolubbee, all deposed to their going to the deceased's house and hearing him say that prisoners Nos. 11, 12 and 13, had beaten him, the two former witnesses seeing him in a bruised condition; the majority of these witnesses also deposing to the prisoners Nos. 14, 15, 16, 17, 18 and 19, forcibly taking away the deceased's corpse and burying it. The evidence of witness No. 17, Kurimooddin, was of no importance; witness No. 18, Mohun Howladar, deposed to his seeing the deceased in a helpless condition, and to his saying that prisoners Nos. 11, 12 and 13 had beaten him. Witness No. 4, Pachoo, and witness No. 7, Kishen Dhun Roy, deposed to the prisoner No. 11 producing a cloth belonging to the deceased, which witness No. 8, Ahsun Alee Meer and witness No. 9, Rubeeoollah, identified as his property.

"The witnesses to the *sooruthal* described the body as in a swollen condition. and not fit to be examined.

"Prisoner No. 11 cited witnesses to prove that the deceased died from a complaint in his chest. Prisoners Nos. 12 and 13, cited witnesses to the same purport. Prisoner No. 14 to the same effect, and that the deceased was buried at the request of his brother and nephew. Prisoners Nos. 15 and 17 cited witnesses to

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prove that the deceased died from a cough. Prisoner No. 16 cited witnesses to prove an *alibi*, and enmity with Rubeeoollah and Edrak, witnesses for the prosecution. Prisoner No. 18 cited witnesses to prove an *alibi* and that deceased died of sickness. Prisoner No. 19 had no witness. Prisoners Nos. 11, 12 and 13, gave petitions, which were a repetition of the pleas urged by their witnesses, they insisting also that the charge was false, and the eye-witnesses connected with each other. Prisoner No. 14 alluded to his dispute with one Fuqeer Bhoya; and prisoner No. 15 repeated the statement of the deceased dying from sickness. Prisoner No. 16 alluded to a dispute between him and the deceased whose daughter he had once married, and to her having been taken away from him. Prisoner No. 17 admitted his being present at the burial, but did not consider it any crime. Prisoner No. 18 alluded to his dispute with the deceased as the cause of his apprehension and to his belonging to the other sect of Mussalmans. Prisoner No. 19 declared he had been made a defendant in consequence of his declining to give evidence in the case at the request of the deceased's brother. Nothing was elicited by the witnesses for the defence calculated to shake the evidence for the prosecution.

"The jury considered prisoners Nos. 11, 12 and 13 guilty of culpable homicide, and prisoners Nos. 14, 15, 16, 17, 18 and 19, of concealment by interring the corpse.

"I considered prisoners Nos. 11, 12 and 13 guilty of being accomplices in culpable homicide, and the other prisoners of concealment of the crime, and sentenced them to punishment accordingly."

Sentence passed by the lower court.—Nos. 11, 12 and 13, each, five (5) years' imprisonment, with labor in irons, and Nos. 14, 15, 16, 17, 18 and 19, each, six (6) months' imprisonment and a fine of rupees fifty (50), or labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoners Meajan, (No. 11,) Tomizooddin, (No. 12) and Wukilooddin, (No. 13,) confessed to the assault, in consequence of which the deceased Usgur Meerah died, both in the Mofussil and before the magistrate. There appears to have been some cause for the assault on the part of the prisoner No. 11, in the intimacy which it is alleged existed between the deceased and Musst. Judoojah, a widow, the mother-in-law of the said prisoner. The confessions, however, do not allude to that circumstance, but to some dispute about land, which the prisoners assign as the reason for having determined to punish the deceased. It may not have been their intention to *kill* the deceased. No weapons were used; but they effected his death, and then threw him down at his own door, in the very worst state, entertaining doubts of his surviving. The other prisoners Nos. 12 and 13, Tomizood-

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din and Wukilooddin, live on the lands of No. 11, and are his *ryots*. Some money was due to the deceased by the prisoner No. 11, and he went to his house to ask for it late one night, and was brought back at day-light in the state above described after the witnesses Sheikh Asgur and Mahomed Hossein had seen him most severely beaten by the prisoners. It is not clearly proved what was the object of the visit which the deceased paid at the house of the prisoner No. 11, on the night of the murder. He was, however, so ill-treated there, that he died within forty-eight hours after the occurrence. I see no reason to interfere with the sentence which the sessions judge has passed upon the prisoners on conviction of culpable homicide.

"The prisoners Nos. 14 to 19, are charged with concealing the crime. The death of Usgur Meerah, by other than natural causes, must have been notorious to the few villagers residing on the spot. The body was buried without information being given to the police, and was exhumed in a decomposed state some days after.

"The jury have convicted the prisoners Nos. 11, 12 and 13, of culpable homicide, and the remaining prisoners of burying the corpse, with intent to conceal the crime. The sessions judge considers the first three prisoners accomplices in culpable homicide, and finds the remaining prisoners guilty of concealment of the crime.

"The prisoners plead *alibi*. One only of them, No. 16, Rubbioollah, has brought forward evidence which in any way supports his defence. He is said to have gone to Kalleenuggur on the day of the burial. This may have been the case; but it does not disprove necessarily the evidence that he was present on the occasion, Kalleenuggur being about one *puhur's* distant from Batamara, where deceased died.

"I concur in the conviction of the prisoners as recorded by the sessions judge, and confirm his sentence."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

TEELUCK CHUNDER CHUCKERBUTTY.

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Case of TEELUCK CHUNDER CHUCKER-BUTTEE.

A private compromise in this case, involving a serious breach of the peace, declared inadmissible, but sentence mitigated.

CRIME CHARGED.—1st count, riotously assembling an armed body, attacking and breaking into the house of Musst. Soobuddra by cutting the door fastenings, and forcibly carrying off Bama Soondury, her unmarried daughter; and 2nd count, accomplice to the same.

CRIME ESTABLISHED.—Riotously assembling armed men, and attacking the house of Musst. Soobuddra, and forcibly carrying off her unmarried daughter, Bama Soondury.

Committing Officer, Mr. T. B. Mactier, joint magistrate of Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 5th February 1852.

Remarks by the sessions judge.—"The prisoner is charged with the forcible abduction of Bama Soondury, a girl of about twelve years of age. It appears that the prisoner wished to marry the girl, and that overtures had been made to the family to that end; but her brother, Sussee Bhoosun Mookerjea, would not consent, on account of disparity in caste of the prisoner as compared with his own. Eight eye-witnesses have been examined in this case, and they all deposed to the prisoner having, with a body of armed men, attacked the house of Subooddra Debea one night in Jeyt last, and carried off her daughter, Bama Soondury. It is on the foujdaree record, and, indeed, stated before this court, that while this case was pending before the magistrate, the aforesaid brother of Bama Soondury accepted rupees four hundred from the prisoner and filed a *dustburdaree*; but this was rejected by the magistrate. The prisoner in his defence urges that his marriage with Bama Soondury had been under negociation for twelve months previous, and the sum of rupees four hundred settled as the amount to be paid by him to the girl's family; that he paid rupees three hundred and fifty of the amount through one Ram Gopaul Sein, and sent him also with a *sawaree* for his intended wife; that Sussee Bhoosun Mookerjea, her brother, objected to allow her to leave her home until the whole amount agreed upon was paid; but that her mother consented and sent her, on condition that he would pay the remaining rupees fifty afterwards; that in consequence of his not having paid it this charge was preferred against him.

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This defence is altogether unsupported. Ram Gopaul Sein, the party through whom he alleges having paid the sum of rupees three hundred and fifty, has not been called, and the witnesses named by him to speak to the fact of the previous negociation of the marriage, and the sending of Bama Soondury by her mother and brother to him of their own free-will, who are in attendance, he will not allow to be examined. I concur in the *futwa* of the law officer which convicts the prisoner of the crime charged, and have sentenced him to three (3) years' imprisonment with labor, unless redeemed by a fine of rupees fifty (50) to be paid within one month. I find amongst the Select Reports a case very similar to this one (Musst. Joykoor *versus* Nuval) decided in the Nizamut Adawlut on the 3rd February 1817; but the sentence of the superior court in that case of one (1) year's imprisonment does not seem to me adequate to the offence committed in this case. The withdrawal of the complaint by a petition of *dustburdaree* does not in my opinion alter the case, nor can it be allowed to shield the prisoner from the penalty of his crime. The case is one of that nature in which parties would generally prefer a compromise, after the mischief has been irremediably done, to appearing in court, and if it were once understood that such compromises would be admitted, this class of crime would become of frequent occurrence."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"A private compromise was, in this case, which involved a serious breach of the peace, inadmissible under Section VIII. Regulation IX. of 1807, which states that no private compromise can be received by a magistrate in crimes of a heinous nature, such as, on conviction, require exemplary punishment for the ends of public justice. The prisoner has appealed, denying, in general terms, the charge; but it is established on the most conclusive evidence. As no property was destroyed, nor violence done to any person, I think the sentence is, with reference to the precedent quoted by the judge and the circumstances of the case, too severe. I accordingly reduce it one (1) year's imprisonment, with labor, unless redeemed by a payment of a fine of rupees fifty (50)."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

PUTEET MUNDUL

versus

SUSTEERAM RAJPOOT (No. 4, APPELLANT), KRISTO DOSS BYRAGEE (No. 5) AND BALUCK HAREE CHOWKEEDAR (No. 6).

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Sentence passed by the sessions judge, affirmed on appeal.

CRIME CHARGED.—1st count, dacoity committed in the house of Munee Bewa, sister of the prosecutor, from whence property valued at rupees 122-7-0, was plundered; 2nd count, accomplices in the above-mentioned dacoity; and 3rd count, privity to the above-mentioned dacoity.

CRIME ESTABLISHED.—Prisoner No. 4, dacoity; No. 6, going forth with a gang to commit dacoity; and No. 5, privity to dacoity.

Committing Officer, Mr. G. A. Pepper, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 3rd March 1852.

Remarks by the officiating sessions judge.—" In this case the house of Munee widow, in which her brother, the prosecutor, resided, was attacked by some ten or twelve dacoits, on the 7th October, or 22nd Assin last. Amongst the gang the prosecutor recognized Susteeram Rajpoot, (prisoner No. 4,) who had formerly been a neighbour, but had, about a year ago, removed to another village. On hearing the disturbance, a number of villagers assembled together near the spot, and immediately after the dacoits retired, the prosecutor told them that he had recognized Susteeram Rajpoot. Several of these villagers followed the dacoits for some distance, and four of them, amongst whom were the prosecutor and two chowkeedars, for three *coss*. At one time they were driven back by the threatening attitude of the dacoits, when they were all enabled to recognize Susteeram Rajpoot by the moonlight, being only about ten cubits from him.

" When they returned to their village of Annutpore, they mentioned the fact of their having recognized Susteeram Rajpoot to several parties, who have corroborated their statements in this court.

" In the Mofussil the prosecutor delivered in three written statements to the darogah, one dated 9th October, one the 10th, and one the 12th October; in the two first, he denied the loss of property, in the third he declared that cash and property to the value of rupees 122-7-0 had been plundered; when ques-

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tioned on the subject of his suppression of this fact, he stated that he had been urged to do so by Issur Mookerjea, who was his confidential servant. This man is implicated by the confessing prisoners as an instigator to the crime.

"Susteeram Rajpoot, (prisoner No. 4,) and Kristodass Byragee, (prisoner No. 5,) were apprehended on the 10th October at the instance of the prosecutor. The first denied all knowledge of the crime. The second admitted that he had been invited to join the party, but had refused; that he saw the gang collected together and Susteeram Rajpoot and Baluck Haree chowkeedar amongst them; that he asked one Pearee Doss if he would go to the dacoity, and that, on his declining, in consequence of his having been once apprehended in a similar case, he went home.

"Baluck Haree, chowkeedar, (prisoner No. 6,) was apprehended on the 11th October on the strength of the confession of prisoner No. 5, and admitted that he had accompanied the dacoits to the vicinity of the village of Annutpore; that when the gang entered the village to commit the robbery, he, through fear, returned home, and that on the following day, he asked Kartick Chowkeedar (one of the party) to give him a share of the plundered property, which he promised to do when the division took place. The statements of the prisoners Nos. 5 and 6, in the foujdaree court were to the same effect.

"In this court the prisoners Nos. 4 and 6, pleaded 'not guilty,' and prisoner No. 5, pleaded 'guilty' to the charge of privity.

"I am of opinion that the case for the prosecution, as against these prisoners, is clearly made out. The recognition of Susteeram Rajpoot amongst the dacoits, whilst they were engaged in plundering the house and returning from the scene of the robbery, by the prosecutor and by witnesses Nos. 1, 2 and 3, appears to have been very complete, and I see no reason whatever to doubt the fact that he was so recognized. It was a moonlight night; they had at times close view of him; they followed him for three *coss;* they were well acquainted with him, and knew his person; they mentioned at the time, that he was one of the dacoits, both to each other and to other respectable and credible witnesses, and he is implicated in the confessions of the other prisoners. The confessions of Kristo Doss Byragee, (prisoner No. 5) and Baluck Haree, chowkeedar, both in the Mofussil and before the magistrate, have been properly attested, and are said to have been voluntarily and freely made, and the former has pleaded guilty to the charge of privity in this court. There is nothing whatever in the evidence for the defence to invalidate the case for the prosecution, or to suggest a doubt as to the guilt of these prisoners.

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"I convict Susteeram Rajpoot, (prisoner No. 4,) of the crime of dacoity, and Baluck Haree, chowkeedar, (prisoner No. 6,) of going forth with a gang to commit dacoity and of privity to dacoity, and sentence them both to ten (10) years' imprisonment, and the latter, being a police chowkeedar, to two (2) years' additional imprisonment in lieu of corporal punishment, and I convict Kristo Doss Byragee, (prisoner No. 5) of privity to dacoity, and sentence him to five (5) years' imprisonment, all with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on the prisoner Susteeram Rajpoot."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

RAJIBLOCHUN KULLOO

versus

PUTIRAM DOME (NO. 18, APPELLANT) AND BIKUNTO DHAWA (No. 19).

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Case of PUTIRAM DOME.

The conviction and sentence of the prisoner for dacoity sustained.

CRIME CHARGED.—Dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J. H. Patton, sessions judge of East Burdwan, on the 14th January 1852.

Remarks by the sessions judge.—"The prosecutor's house was attacked by a gang of about fifty dacoits on the night of the 22nd of November. He was lying awake when he heard something heavy applied to the door of the room he was in. After one or two shocks the door gave way and some ten or twelve dacoits entered the apartment with two lighted torches. They struck him two or three blows with their sticks, and one of them applied a burning torch to his back by which he was scorched. The dacoits did not take any of the property they saw in that apartment, but asked him to point out others on the premises, which he did, and while the dacoits were employed in plundering these, he effected his escape. Shortly after this a general alarm was given through the village, and the people collected *en masse* when the dacoits left the premises. On their retreat the witnesses Tinkouri and Bhugwan Chowkeedars, two brothers, followed them, and the former, in the most gallant way, threw himself among the dacoits and laid about him manfully with a bill-hook, wounding several. Such was the violence of the onset made by these brothers, that the dacoits were induced to abandon the few

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articles of plunder they were carrying off, which were recovered after their flight. When Tinkouri and Bhugwan first went to the assistance of the attacked house, the dacoits were on the premises, and they distinctly recognized the prisoner No. 18, at a short distance by torchlight. The evidence for the prosecution further proves that the prisoners confessed before the darogah on their apprehension, and that the prisoner Bikunto Dhawa reiterated his confession before the magistrate, and exhibited on his right shoulder-blade a severe incised wound. They both plead 'not guilty' before this court. The prisoner Putiram Dome denies his Mofussil confession, and declares himself to be the victim of a grudge entertained towards him by the witness Tinkouri, but assigns no cause for the vindictive feeling. He calls the witnesses named to his defence to prove the plea and to show that he was apprehended in his own house. The prisoner Bikunto Dhawa repudiates both his confessions, and pleads that the wound apparent on his person was caused by the falling of a hatchet out of his hand while cutting a date tree branch, citing witnesses in proof of defence. Four witnesses were examined on behalf of the prisoner No. 18, who give no evidence whatever as to the plea set up, but make an awkward attempt to establish an *alibi*, the testimony regarding which is utterly disentitled to credit, to say nothing of the very short distance (half a mile) between the scene of the dacoity and the place the prisoner is alleged to have been at during its perpetration. Two witnesses only were called by the prisoner No. 19, but they denied all knowledge of the circumstances pleaded in his defence. The evidence against both the prisoners is conclusive, and I have no hesitation in convicting them. This commitment should have been made for dacoity attended with wounding, not simple dacoity."

Sentence passed by the lower court.—Each fourteen (14) years' imprisonment with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner Putiram has appealed, reiterating the defence made at the trial; but the evidence adduced in proof of it is unworthy of credit. The witnesses Bhugwan and Tinkouri fought bravely with the dacoits; and they depose distinctly and consistently to the recognition of the prisoner at the time of the robbery; in addition to this evidence is the prisoner's Mofussil confession, which has been duly proved. I see no reason to interfere with the conviction and sentence, and reject the appeal."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

HAMIDOOLLAH

versus

ROHIM SIRDAR (No. 2) AND KRAMDY SHEIKH (No. 3, APPELLANT).

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Case of KRAMDY SHEIKH (appellant) and another.

The sentence awarded, being considered under the circumstances too severe, was reduced.

CRIME CHARGED.—1st count, dacoity attended with wilful murder of Amjood Khansama, the brother of the prosecutor, and wounding of witnesses Nos. 2, 3, 4 and 5, on the boat of the deceased, during the night of the 16th September 1851, corresponding with the 1st Assin 1258 B. S, when rupees 821-13-0 worth of property belonging to the prosecutor, rupees 122-0-6 worth of property belonging to witness No. 1, and rupees 82-12-0 worth of property belonging to Kaderbux, absent, making a total of rupees 1,026-9-6, was abstracted; and 2nd count, having part of the plundered property in their possession knowing it to have been obtained by robbery by open violence.

CRIME ESTABLISHED.—No. 2, dacoity with wounding, and knowingly receiving property plundered by dacoity, and No. 3, knowingly receiving property plundered by dacoity.

Committing Officer, Mr. H. Rose, joint magistrate of Khoolnah, Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 26th February 1852.

Remarks by the sessions judge.—"The witnesses for the prosecution prove that the boat in which Nos. 1 to 5, as well as Kaderbux, absent, were, was attacked by dacoits. Amjood Khansama rushed out with a sword, and witnesses Nos. 2, 3, 4 and 5, were wounded and jumped overboard, and that Amjood Khansama was also wounded and fell overboard and has not appeared since; but *there is no proof of wilful murder*, or of his having died from the effects of the wounds. The confessions of the prisoner No. 2, and of the absconded Jumeer, both before the police and the joint magistrate, corroborate the evidence of the witnesses, and show that both the prisoners under trial as well as Jumeer (who escaped from the jail at Khoolnah) in company with others, committed this dacoity, and that Kramdy is a sirdar; but the confessions of accomplices are not sufficient of themselves to convict Kramdy of dacoity. The plundered property found in the possession of both prisoners under trial was recognized by witnesses for the prosecution.

"The prisoners plead 'not guilty' at the sessions; but the witnesses named by them say nothing in their favor.

"The crime of dacoity with wounding and knowingly receiving property plundered by dacoity being proved against the pri-

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Case of Kramdy Sheikh (appellant) and another.

soner Rohim Sirdar, and that of knowingly receiving property plundered by dacoity being proved against Kramdy Sheikh, I sentence them both to imprisonment in banishment with labor in irons for fourteen (14) years.

"I tried the case under Act XXIV. of 1843."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The prisoner *Kramdy* is rightly convicted of having in his possession plundered property knowing it to be such, but the sessions judge has sentenced him to the same punishment as the prisoner convicted of the actual plundering, *viz.*, fourteen (14) years' imprisonment. I remit seven out of the fourteen (14) years' imprisonment."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT

versus

BAWOOL MUNDUL (No. 15) AND AMEER KHULIFA (No. 19).

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Case of Bawool Mundul and another.

On the sentence passed by the sessions judge affirmed.

CRIME CHARGED.—Riotously assembling and attacking the houses of Sheikh Jureepoola, Sheikh Gureeboollah, Sheikh Ameeruddeen, and Sheikh Kullumdee, in open day, and plundering their property and cattle, valued at rupees 149-14-6.

CRIME ESTABLISHED.—No. 15 riotously attacking houses and carrying off cattle, and No. 19, riotously attacking and plundering property and cattle in three cases.

Committing Officer, Mr. J. J. Ward, joint magistrate of Pubnah, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 30th December 1851.

Remarks by the sessions judge.—"This was a wanton case of cattle-lifting by the defendants, of the Hazleebut factory. Why, or on what account, they were taken, has not been ascertained. Both prisoners are convicted of the charge by the *futwa*; and, concurring, I have sentenced them to the same punishment as if they had stolen the cattle, (three (3) years' imprisonment), adjudging a fine in lieu of labor, as regards No. 15, as he has been sentenced to less than five (5) years' imprisonment. No. 19, I have sentenced to six (6) years' imprisonment for the three cases; as there can be no doubt of his being by profession a *latteeal.*"

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on the prisoner Bawool Mundul."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

RAMJOY PATHUR

versus

RAMLOCHUN PATHUR.

1852. May 4. Case of RAMLOCHUN PATHUR. Homicide by a blow with a heavy club, with intent to inflict serious bodily harm; sentence seven years' imprisonment.

CRIME CHARGED.—1st count, wilful murder of Ramdoola, nephew-in-law to the prosecutor; and 2nd count, culpable homicide of Ramdoola.

Committing Officer, Mr. F. B. Simson, officiating magistrate of Chittagong.

Tried before Mr. S. Bowring, officiating sessions judge of Chittagong, on the 2nd April 1852.

Remarks by the officiating sessions judge.—"It appeared from the evidence of the prosecutor and witnesses, that on the morning of the 10th Phagoon, the children of prosecutor and defendant quarrelled. The mothers of the children interfered and also quarrelled, when they were separated by the deceased. The prisoner returned to his home in the evening, and after some communication with his wife, called for a *dâo*, saying he would take some one's head, and seizing a *moossul*, a heavy club of wood, used for pounding rice, belonging to his sister, went to the house of the prosecutor, where deceased was living. Deceased told him to go to court to complain, when prisoner struck him one blow on the side, and deceased fell dead. Prisoner was seized by the prosecutor, but rescued by his relations; and the next day complaint was made at the thanna.

"The prisoner pleaded 'not guilty,' but spoke more fully before the magistrate than in this court, and called witnesses who deposed rather in favor of the prosecutor.

"The jury were unanimous in finding the prisoner guilty of culpable homicide.

"The evidence of Dr. Chevers is *doubtful as to the cause of death.* The case is a peculiar one; but comparing the medical testimony with the deposition of the witnesses for the prosecutor, and those at the inquest, I cannot doubt that the death of the deceased was caused by the prisoner. There seems to be no quarrel between the witnesses and either of the parties concerned in the case: on the contrary they are mostly related to them. The whole village of Dhomes has come forward; and all accuse the prisoner of the crime.

"The club with which the blow was inflicted is very heavy (four seers nine chittacks), of close-grained wood, and must have been lifted with both hands. The prisoner, if intending really to cause death, would probably have inflicted the blow on

the head, or on a more vital part than the side, where it might have been warded off. Giving him the benefit of this doubt, I would convict him of aggravated culpable homicide, and sentence him to fourteen (14) years' imprisonment, with labor and in irons, considering a shorter period an insufficient punishment.

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"The magistrate has been informed that when committing for murder, it is not necessary to charge culpable homicide in a second count."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—"It appears to me that there was no premeditated intention on the part of the prisoner to do any injury to the deceased; he was in a passion from what his wife had told him, and went with a *moossul*, a club, in his hand, and on the deceased recommending him to go to the zemindar, he struck him on the right side with the club. The witnesses say he fell and died instantly; but the surgeon on his *post mortem* examination could find no mark of injury, either external or internal. He admitted, however, that the prisoner might have died, as stated by the witnesses nevertheless. I see no reason to doubt the fact that the deceased died from the blow given, but, in consideration of all the circumstances, I think seven (7) years' imprisonment, with labor and irons, a sufficient punishment. Sentence accordingly."

PRESENT:

W. B. JACKSON, Esq., *Judge*.

SHEIKH TEZARUT

versus

SHEIKH HAVELL (No. 4) AND SHEIKH JUNGLEE (No. 5).

1852. May 4. Case of SHEIKH HAVELL and another. The appeal preferred by the prisoners, rejected.

CRIME CHARGED.—Wilful murder of Sheikh Huzrut, brother of the prosecutor.

CRIME ESTABLISHED.—Accomplices in the culpable homicide of Sheikh Huzrut.

Committing Officer, Zyanooddeen Hossein, deputy magistrate of Manickgunge, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 2nd February 1852.

Remarks by the sessions judge.—"The prisoners are charged with the wilful murder of Sheikh Huzrut, the brother of the prosecutor. It appears that on the 20th of Bhadoon last, the deceased and prisoners quarrelled, in consequence of the former's cow having destroyed their crop, and that they assaulted and beat him. He complained immediately to the zemindar's naib,

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and the prisoners were fined. On the following morning the prisoners and others, who, it is shown, were ill-disposed towards deceased, because he would not go over to another zemindar as they had done (not yet arrested), in revenge for the complaint and fine which had been imposed on them, again assaulted him and beat him to death. Six eye-witnesses depose to having seen the prisoners and two others, who are reported to have absconded, beat the deceased to death. The prosecutor with the chowkeedar of the village and others took the body on the same day to the thanna, and he then and there charged the prisoners with having assaulted and killed his brother. The body, however, did not reach the sudder station in time to admit of a *post mortem* examination, and the evidence of the witnesses to the inquest is not clear as to the cause of death. The prisoners, in their statements before the police, admit having had a dispute on the 20th of Bhadoon with deceased, in consequence of his cow having destroyed their crop; to their having come to blows; to his having complained to the naib zemindar, and to their having been fined in consequence; but they deny the subsequent assault on the following morning and urge that deceased quarrelled with his wife on the night of the 20th of Bhadoon and hung himself. Their defence before this court is to the same purport and they have called witnesses in support of it, but I considered it entitled to no credibility. The proceedings of the police in this case are discreditable, and the conduct of the thanna mohurir, who was deputed to inquire into it, and out of whose hands the deputy magistrate deemed it necessary to withdraw the investigation, is open to the suspicion of an attempt to smother the case. In concurrence with the *futwa* of the law officer, which convicts the prisoners of being accomplices in the culpable homicide of Sheikh Huzrut, they have been sentenced to five (5) years' imprisonment with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on the prisoners Havell and Junglee. Return the proceedings."

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

CHURAG ALEE

versus

MIRTUNJOY BHOJ (No. 21), BHOLAI MOLLAH (No. 22), SHEIKH MOLOMOODDEEN (No. 23), PURUSOOLLAH SIRDAR (No. 24), AKBUR MAHOMED ALIAS EKABUR (No. 25), AGUR MAHOMED (No. 26) AND OTHERS. (Nos. 27 TO 34 ACQUITTED BY THE LOWER COURT).

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Case of MIRTUNJOY BHOJ and others.

The sentence passed by the sessions judge, on the prisoners, convicted of a tumultuous assault on, and plundering, the prosecutor's boat, affirmed in appeal.

CRIME CHARGED.—1st count, dacoity on the boat of the prosecutor on the river, and plundering property (mustard seed) to the value of rupees 440; 2nd count, riotously assembling in an armed body, attacking the boat of the prosecutor, assaulting the mullahs, and plundering the above-mentioned property; 3rd count, accomplices in the above-mentioned crime; 4th count, accessaries both before and after the commission of the above crime.

CRIME ESTABLISHED.—Nos. 23 to 26, riotously assembling in an armed body, attacking the boat of the prosecutor, assaulting the mullahs, and plundering property therefrom; and Nos. 21 and 22, accomplices in riotously assembling in an armed body, attacking the boat of the prosecutor, assaulting the mullahs, and plundering property therefrom.

Committing Officer, Mr. C. Mackay, principal sudder ameen of Furreedpore, with powers of a magistrate.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 26th February 1852.

Remarks by the sessions judge.—"The prisoners Nos. 21 to 27, are charged on four different counts, first with dacoity and plundering property from the boat of prosecutor to the amount value of rupees 440; second, with riotously attacking in an armed body the boat of the prosecutor and plundering therefrom property valued at rupees 440; third, with being accomplices in the above crime; fourth, with being accessaries before and after the fact. The prisoners Nos. 28 to 34, are charged with receiving and having in their possession part of the aforesaid plundered property knowing it to have been so acquired. On reading the commitment proceedings in this trial, it was evident to me that the case was not one of dacoity, nor indeed had any semblance to one, the origin of the affair being nothing more than a question as to the particular bazar at which the prosecutor should sell his cargo. I consequently directed the law officer to sit on the trial and required from him a *futwa*

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on the minor charges. It appears that the prosecutor took in a cargo of mustard seed in zillah Monghyr, and was on his way to Modookholly bazar, in this district, to dispose of it. On the 3rd of December last, he was sailing down the Chunduna river, and when arrived at Muxsoodpore bazar, which is on its bank, he was hailed from the bazar by some people and required to bring his boat to the ghaut. This he refused to do, urging that he was going on to Modookholly, on which two *dinghies* with a number of men on board were sent off by the prisoners Nos. 21 and 22, and one Nubboo Sircar (not yet arrested) to bring the boat to the shore, which was done, and the boat secured. Prosecutor appears to have gone on the following day by land to Modookholly (stated to be about six miles distant from Muxsoodpore) and returned the next day with a letter from Hossein Mirdah, of Modookholly, to the prisoner No. 21, begging him to release prosecutor's boat, but he still refused to do so. On the next day, the 7th December, he again went to Modookholly, and his consignee, Durkanth Koond, induced a police guard boat that was passing Modookholly to go and release prosecutor's boat. The guard boat manjee took prosecutor on board and went to Muxsoodpore, and on reaching that bazar prosecutor ordered his boatmen to loose his boat and go to Modookholly, which they did; but they had not proceeded far when three boats with armed men came off, and setting the police guard boat at defiance, again carried the prosecutor's boat back to the ghaut. The guard boat manjee on this left the place, taking prosecutor with him, whom he landed at the nearest spot to the thanna, where he went and laid his complaint on the 8th December. The case was inquired into by the police, and the prisoners arrested and finally committed on the charges above detailed. From the evidence of the eye-witnesses, of whom nine have been examined, the seizure and detention of prosecutor's boat, in the first instance, on the 3rd of December, with a view to compel him to sell his cargo at Muxsoodpore bazar, and in the second instance, on the 7th idem, the forcible seizure and detention of prosecutor's boat, assault on the boat-people in defiance of the river police, and subsequent sale of part of the cargo, are proved against the prisoners Nos. 21, 22, 23, 24, 25 and 26; the recovery of a portion of the property from those who purchased is also established, by the evidence of witnesses, and the confessions of the purchasers themselves. In their confessions, however, both before the police and the joint magistrate, they urge that they were forced into purchasing by the zemindar's naib, Mirtunjoy, (prisoner No. 21.) The prisoners Nos. 21 and 22 deny the charge, and plead that prosecutor brought his boat to Muxsoodpore, and sold his cargo of his own free will, and that the case has been got up against them by the proprietor of an adjoining *haut*, from enmity which exists

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between him and his master, Joychunder Paul of Ranaghaut, and also with a view of ruining the bazar. The other prisoners, from Nos. 23 to 26, plead *alibis*, but they are not sufficiently supported to exculpate them ; and in concurrence with the *futwa*, which convicts the prisoners Nos. 23, 24, 25 and 26 of the attack, &c., on the prosecutor's boat, and Nos. 21 and 22, with being accomplices therein, they have been sentenced to three (3) years' imprisonment without irons, and Nos. 23 to 26, to a fine of rupees twenty-five (25), and Nos. 21 and 22, to a fine of rupees fifty (50) or labor."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed. They reiterate the pleas set forth in the defence, but the *alibis* are not supported by credible evidence, and there is no reason to doubt the truth of the charge. The prosecutor is a trader, and had not visited the *haut* in question for ten years before the occurrence, and his conduct throughout the proceedings was that of an injured person. I think the prisoners are very clearly convicted of having tumultuously assembled in an armed body, attacking the prosecutor's boat, and plundering property therefrom. Acts of violence of this kind are frequently committed by the proprietors of rival *hauts*, and I do not think the measure of punishment, awarded by the sessions judge, is, with a view to their repression, too severe. I confirm the finding and sentence."

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

NAPEK KAI
versus
NGATSEE-LAI.

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Case of NGATSEE-LAI.

A prisoner, convicted of highway robbery with murder, sentenced to transportation for life. A piece of bamboo, found near the spot where the attack was made, was the only weapon which had been used by the prisoner, and it might have been by mere accident that the blow proved mortal.

CRIME CHARGED.—Highway robbery with murder, in having, on the 10th day of the waxing moon of the month Tabodwe 1213 M. S., corresponding with the 30th January 1852, assaulted on a public road and beaten the father of prosecutor, by name Kyeng-o, on the head with a stick, thereby causing his death, and with having at the same time and place robbed the said Kyeng-o, of cash to the amount of rupees 20, and other property, value unknown.

Committing Officer, Lieutenant G. Faithful, officiating principal assistant commissioner, Aeng, Arracan.

Tried before Captain A. P. Phayre, commissioner of Arracan, on the 25th of March 1852.

Remarks by the commissioner.—"This case occurred on the high road leading from the town of Aeng, through a hilly country, towards the Burmese frontier. The prosecutor is a boy of thirteen years of age, and the son of the deceased. He was not sworn in the magistrate's court, as that officer was not satisfied that he understood the nature of an oath. On my questioning him, however, I was satisfied that he was fully aware of the obligation he was under to tell the truth, and that he was a boy of considerable intelligence. I therefore administered an oath to him in the usual form, and took his deposition thereon.

"Prosecutor states, that he and his father, the deceased, resided at the village of Kubanee, a few miles from the town of Aeng. They came into the town to sell three cows, and sold them for twenty rupees to one Moung Youk. They then left Aeng sometime after sunrise, the deceased carrying a small basket, in which were deposited the rupees, tied up in a bag, and also some articles of food. They went on, and were yet some distance from their residence, but near to a village named Tsat-tsee, and the prosecutor was a little distance in front, when he heard a cry from his father, the deceased. He ran back and saw his father lying on the ground speechless, and a man whom he cannot recognize, with his head covered with his *putsho*, or waist-cloth, retreating up the hill-side. The man had in his hands a stick, and the small basket which deceased had been carrying; prosecutor states he saw blood on the back of his father's head, near the top of it. He then cried aloud, and the people of Tsat-tsee village heard him and several of them came to the spot. Infor-

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mation was immediately given at the thanna of the town of Aeng, and before the darogah arrived at the spot the deceased was carried to his own house at Kubanee. The darogah arrived the same night, and found him at 7 P. M. still breathing, but unable to speak. There was a wound on the back of his head towards the top, three fingers breadth long, and a thumb breadth broad, apparently produced from the blow of a stick. The deceased died that night.

"On further inquiry it appeared that four men, from another village, had met the deceased and prosecutor on the road, on the day in question. These four men are the witnesses No. 15, Nahmatteng, No. 16, Nakyowek Kai, No. 17, Kyouk Kai and No. 18, Nakoo. They state that, on the day in question, after having met prosecutor and deceased near the hill leading down to Tsat-tsee village, they went on towards their own village, which lies in the direction of the town of Aeng, and being tired, halted to rest on the road. While there, a man came running past in the direction of the town of Aeng, who, on being asked by No. 15, Nahmatteng, where he was going, replied that he had two companions ahead. It appears that, from the general description of this man so seen running, the police apprehended several persons in the town of Aeng, and witnesses No. 15, Nahmatteng, and No. 16, Nakyowek Kai pointed out one Tay-noung, as being a person like the one they had seen. This was on the 31st January 1852. On the 5th of February following, witnesses No. 17, Kyouk Kai and No. 18, Nakoo, stated they thought the man they had seen running was Ngatsee-lai, the present prisoner. But it is clear from the evidence of all these witnesses, both before the magistrate and this court, that they cannot with certainty recognize the prisoner, and that these two, who said they thought he was the man, did so only after his own confession at the thanna.

"Upon Tay-noung being pointed out as a man like the person met, under the circumstances above stated, his reply was taken by the darogah, and he stated that his brother Shwe-tshaing told him Ngatsee-lai had struck a man who had sold cows, and that he told this to Shwe-tshaing in whose house Ngatsee-lai lodged, and thinking Shwe-tshaing would give information at the thanna, he did not do so himself. Shwe-tshaing on being questioned, stated at the thanna, that Ngatsee-lai had told him, he (Ngatsee-lai,) had killed Kyeng-o. Shwe-tshaing confirmed this account. On prisoner Ngatsee-lai being questioned, he made a full confession of his guilt before the thanna darogah on the 2nd of February 1852. He stated that he followed prosecutor and the deceased; that he picked up a bamboo, and overtaking the latter near to the Tsat-tsee hill, smote him twice on the head; deceased fell, and prisoner took up his basket and carried it off. Going a little way he

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threw it away, and took some fruit out of it; but left the money. He also threw away the stick, and going towards home passed the party of four men at a small stream, who asked him where he was running to. He told this to Shwe-tshaing the next morning. On the 4th of February he further stated, he was instigated to commit this robbery by Shwe-tshaing; that they started together from town and changed clothes on the way, and Shwe-tshaing remained behind, because deceased would know him; that after striking deceased, he took the basket to Shwe-tshaing, who took the money out and ran away.

"Before the principal assistant, the prisoner, on the 14th February 1852, again confessed his guilt, stating that he had committed the crime at the instigation of Shwe-tshaing, and that the latter took the money from deceased's basket and ran off.

"Before this court the prisoner admitted both his confessions, but stated the one at the thanna was made under fear of the darogah, and the one before the principal assistant in consequence of being told by the darogah that he must confess before the magistrate. He denied his guilt before this court.

"The prisoner, being taken to the spot, pointed out to the thanna writer a bamboo on the hill side not far off, which he said was the stick with which he perpetrated the act, and which he had picked up on the way. This bamboo was produced before the court. It is a little more than three feet long, weighs fifty rupees and a quarter, and appears to be such a bamboo as might be picked up in the jungles where the robbery occurred.

"I consider the charge is fully proved against the prisoner, and I recommend that he be sentenced to imprisonment for life in transportation beyond sea."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin).—"The guilt of the prisoner is clearly established. A piece of bamboo, found near the spot where the attack was made, was the only weapon used by the prisoner, and it may have been by mere accident that the blow proved mortal. In the thanna confession there are reiterated expressions, which are not in the confession before the principal assistant, of the prisoner's having struck at the deceased with full intent to kill him, but no reliance can be placed on these as having been really and voluntarily employed by the prisoner. The conviction must be of highway-robbery with murder; but under the circumstances, I think that the sentence proposed by the commissioner will be appropriate and sufficient.

"I sentence the prisoner accordingly to imprisonment for life in transportation."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

BAIRUB MUNDLE

versus

NOBIN ROY MANJEE, CHOWKEEDAR (No. 27), BHOWANNY HARRI (No. 28), HEERACHAND HARRI (No. 29), BAHADOOR HARRI (No. 30), CHOWDRY HARRI (No. 31), DEBEE MANJEE (No. 32), NUFFUR MANJEE GHUTWAL (No. 33), MODHOO HARRI (No. 34) AND JADOO HARRI (No. 35).

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Case of NOBIN ROY MANJEE, Chowkeedar, and others.

Several prisoners recommended for punishment in a case of dacoity with murder, chiefly on evidence of recognition, acquitted.

CRIME CHARGED.—Nos. 27 to 35, dacoity, on the night of 28th October 1851, corresponding with 12th Kartick 1258 B. S., in the house of the prosecutor, Bairub Mundle, attended with the murder of Nuffur Mundle, uncle to the prosecutor, and the plunder of property, value rupees 13-7-0.

Commiting Officer, Mr. C. H. Campbell, officiating joint magistrate of West-Burdwan.

Tried before Mr. P. Tayler, sessions judge of West-Burdwan, on the 1st April 1852.

Remarks by the sessions judge.—"All the prisoners plead 'not guilty.'

"The account of the case given by the prosecutor, Bairub Mundle, nephew of the murdered man Nuffur Mundle, is as follows:—

"'On the night of the 12th Kartick, my uncle was sleeping 'in the north-doored house, and I in the eastern-doored one. At 'about one *puhur* (nine o'clock), or perhaps a little later, some 'dacoits came and began to beat upon the pannels of the door 'of the house in which I was sleeping. On hearing them, I 'became much frightened, and got into a *moorye*, or receptacle 'for grain, which was under a plank covering in the floor, and 'hid myself. I had no sooner done so, than some of the dacoits 'entered, with their *mussals* burning, and began plundering. 'Others of them broke open the door of the house in which my 'uncle was sleeping, and, rushing in, laid hands upon him. He 'made a great noise, but I was not, at that time, aware, that he 'had received any blows or wounds. Presently after I heard 'him crying out, that the Khoiras had cut his person, and that 'he would be able to recognize them. Though I heard this, I 'lay close in the *moorye*, as I was greatly terrified. By this 'time the inhabitants of the village were alarmed, and, on their 'coming near and making a noise, all the dacoits ran out of the 'house and made their escape. As I had been in the *moorye* 'up to this moment, I could not recognize any of them, nor

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'count them, nor see in which direction they fled. Shortly 'after the departure of the dacoits, Brijo Mundle (No. 1), Go- 'paul Mundle (No. 2) and Govind Mundle (No. 3), came to the 'house, and, on hearing their voices, I came out of the *moorye*, 'and saw my uncle lying near the front door of the *baree*, 'bleeding from his left arm and hand. He was alive, but lying 'on the ground, very weak, and unable to get up. When I 'asked who had wounded him, he said, Debee Manjee (No. 32), 'Nuffur Manjee (No. 33), Heerachand Harri (No. 29) and 'Bhowanny Harri (No. 28), had struck him with swords, and 'that he had recognized all the Damoodurpore Harris among 'the dacoits. Brijo (No. 1), Gopaul (No. 2) and Govind '(No. 3) Mundles, at the same time came forward and said, 'that they had also recognized certain Harris and Khoiras, but 'I do not recollect the names they mentioned. I was unable 'to give notice of what had occurred to the police that night, 'but went to the jemadar of the Rajgaon *phandee* next morn- 'ing, and related what had occurred. On hearing my story, the 'jemadar said, go back to your village, and I will follow you. 'I did so, but meeting my uncle borne upon a *charpaee* on 'the road home, turned backed with him to the *phandee*, where 'the jemadar took his deposition (here the deponent gives the 'substance of the deposition, very exactly). After this my 'uncle, who was very weak from loss of blood, requested to be 'sent to the joint magistrate, at the sudder station, and the 'jemadar forwarded him' accordingly. I was unable to accom- 'pany him, but afterwards heard that he died the day after his 'arrival at Bancoorah. Immediately after my uncle's departure, 'the jemadar proceeded to make his inquest at my house, and 'was shortly joined by the mohurir of the Bancoorah thanna, 'who assisted him therein. The dacoits left nothing behind 'them, but the scabbard of a sword and a piece of red cloth. 'My deposition, including a list of the plundered property, was 'taken by the mohurir. The whole property aforesaid, consist- 'ing of brass *lotas*, plates and cloth, was worth about rupees '13-10-0. On the first day, (13th Kartik,) the mohurir and 'jemadar went to search the house of the prisoners Nuffur '(No. 33) and Debee (No. 32), at the village of Bauzka. They 'were found at home, seized, and their house searched, when 'the *kutoora* No. 1, was found in their north-doored hut. As 'the search was made by a certain *ghutwal*, while I remained 'outside, I cannot say from what precise spot, or receptacle, the 'article in question was extracted. After this the habitation of 'Nobin Chowkeedar (No. 27), was examined, and the little '*kutoora*, No. 2, found, in his north-doored hut. As both the 'above *kutooras* are my property, I declared them to be so. 'Next day, the mohurir and jemadar went to Damoodurpore and,

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'after seizing Bahadoor (No. 30) and Chowdry (No. 31) Harris, 'who I heard were brothers, searched their houses, and found '*kutoora* No. 3, with the red-edged *saree* and *dhotee* therein. 'As I did not enter the hut, I cannot say from what particular 'spot, or receptacle, the articles in question were extracted. 'After this the south-doored house of Heera (No. 29) and 'Bhowanny (No. 28) Harris was searched, from which the large '*kutoora*, No. 6, and another red-edged *dhotee* were brought 'forth. The huts of Jadoo (No. 35) and Modhoo (No. 34) 'Harris, were also searched, but nothing was found in them. 'All the plundered property, from Nos. 1 to 7, inclusive, is 'mine. After the house of Nobin Chowkeedar, (No. 27), had 'been searched, and property, as above described, found therein, 'he was brought to my village (Chuttoordihee) and confessed 'that Nuffer (No. 33), Debee (No. 32) and himself had remain'ed outside my house, under a *bur* tree, while the rest of the 'dacoits, whose names he mentioned, entered and *looted* it. 'This is my deposition.'

"The prosecutor's foujdaree *izhar* was similar, but he therein stated, that when his uncle began to make outcry, on being attacked, he, (deponent,) opened the door of the apartment, or hut, in which he was, and saw ten or twelve dacoits, with swords and *lattees* in their hands, and clothes upon their heads, among whom he recognized the prisoners Nuffur (No. 33) and Debee (No. 32); that the dacoits fled in the direction of Rajgaon, and that his uncle had only named Heera (No. 29) and Debee (No. 32), as the persons who had wounded him. When called upon to account for these discrepancies, he acknowledged that the above statements were the true ones, with the exception of the last, which was not correct, because the deceased had certainly named the prisoners Nuffur (No. 33), Debee (No. 32), Heera (No. 29) and Bhowanny (No. 28), as the persons who had wounded him.

"The prosecutor also deposed, in his said *izhar*, that the dacoity was the result of previous enmity on the part of Nuffur Manjee (No. 33); that the sword scabbard, left by the dacoits, was Heera Harri's (No. 29), property, and the chowkeedar of his village was not present on the night of the dacoity, but came to him about 8 o'clock the day after. When questioned by me on these points, he said, that there was a quarrel, about a debt, pending between his uncle and the prisoner Nuffur (No. 33), at the time of the dacoity; that the ghutwals had told him what he said about the sword scabbard, and that Nobin (No. 27), was the chowkeedar alluded to.

(1.) Brijo Mundle.
(2.) Gopaul Mundle.
(3.) Govind Mundle.

"The two first eye-witnesses, named in the margin, unfortunately died of small-pox before the trial in the sessions court came on, but their deposi-

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tions, which were carefully taken before the officiating joint magistrate and which are supported by that of the living witness, and attested by the mohurirs who wrote them, ought not, in my opinion, to be set aside.*

"The foujdaree and sessions depositions of No. 3, which are not discrepant, except in one particular, gave the following account of what he saw :—

"'I knew all the prisoners before the occurrence of the dacoity, and I am a distant relative of the prosecutor, from whose 'house mine is one *russee* distant. At about twelve o'clock, on 'the night of the dacoity, I stood with Brijo (No. 1) and Go-'paul (No. 2), on a low wall, to the south of their house and 'opposite to that of the prosecutor, and saw, from a distance 'of six or seven cubits, fifteen or sixteen dacoits, armed with 'swords and *lattees*, and carrying lighted *mussals*, issue from the 'latter. Among them I recognized Heerachand Harri (No. '29), Debee Manjee (No. 32), Nuffur Manjee (No. 33), Jadoo 'Harri (No. 35), Bhowanny Harri (No. 28), and Modhoo 'Harri (No. 34). Heera Harri had a naked sword in his hand, 'Debee Manjee a sheathed one, and the rest bore *lattees* only. 'The dacoits threw away two of four *mussals* they carried, and 'went off towards Rajgaon, with the other two burning. We 'three then went into the prosecutor's house, and found him 'standing near his uncle, Nuffur Mundle, who was lying inside, 'near the front door, wounded in the arms in two places, and 'bleeding. When we asked who had wounded him, he answered, 'Heera (No. 29) and Debee (No. 32). He was sensible at that 'time, but weak from loss of blood. When he was taken to the '*phandee*, I did not accompany him, but heard that he after-'wards went to Bancoorah and died there. I recognize the 'property found in the houses searched, because I have been 'in the habit of seeing it in the prosecutor's house daily. The 'prisoners are *budmashes*, and always committing thefts, &c. 'There has been enmity, for some time, between Nuffur Man-'jee and the deceased, about a debt owing by the former to the 'latter. I don't know how it happened that the deceased lent 'his money to people of such bad character.'

"The one discrepancy between the two depositions was this: in his foujdaree one he said, that Heera, Debee, and Nuffur all bore swords on issuing from the prosecutor's house, whereas, before me, he said what has been above put down. When called upon to explain, he affirmed that the statement made by him before the joint magistrate was the correct one.

"The depositions of the deceased eye-witnesses, (Nos. 1 and 2), were nearly similar to the above, the only differences were,

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* The prisoners had also a sufficient opportunity of cross-examination. before the officiating joint magistrate.

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that both recognized two more prisoners, *viz.* Chowdry (No. 31) and Bahadoor (No. 30) Harris; that No. 1 declared the sword-bearers to be Debee (No. 32), Nuffur (No. 33) and Heera (No. 29), whereas No. 2 named Heera (No. 29) and Debee (No. 32), only as such, though he acknowledged that some of the other dacoits had similar weapons; moreover No. 2 agreed with No. 3 in saying that the deceased named Heera (No. 29) and Debee (No. 32), as the persons who wounded him, whereas No. 1 added Nuffur Manjee (No. 33).

"The capture of the several prisoners, the *sooruthals*, the finding of the property alluded to in the prosecutor's deposition, its identification, the confession of prisoner No. 27, and the two depositions of the deceased Nuffer, have all been sufficiently proven by the witnesses named under those heads in the calendar. Nuffur Ghutwal, No. 4, indeed, could not be examined as to the capture of Nobin (No. 27), as he was sick with cholera, but that is of no consequence in the face of the two confessions of that prisoner.

"The brass utensils, forming the greater part of the plundered property, being old and worn, were easily identifiable, by persons accustomed to see them.

"The deposition of Radha Madhub Doss No. 9, the native doctor, who examined the body of the deceased Nuffer Mundle, in consequence of the temporary absence of the civil assistant surgeon, shows, that the deceased had received two slight, and three very severe wounds, from the effects of which he could hardly have recovered, under any circumstances. The former consisted of a scratch on the breast and a cut on the finger, while the latter severed a portion of the flesh and bone above the elbow of the left arm, entirely divided the forearm, and cut through the calf of the left leg down to the bone.

"The Mofussil confession of Nobin Chowkeedar, of the prosecutor's village of Chuttoordihee, (prisoner No. 27) was to the following effect:—

"'On the night of the 12th Kartick, I was in my own house. 'At about one *puhur*, (nine o'clock), Heerachand Harri (No. 29), 'of Damoodurpore, came to me and my cousins Nuffur (No. 33) 'and Debee (No. 32) and said, come all of you with me to the 'mangoe tope. Upon my asking what for, he said come along 'and I will tell you when we get there. We thereupon went 'with Heera to the place designated, which is on the eastern side 'of the village, and found Bhowanny (No. 28), Bahadoor (No. '30) and Jadoo (No. 35) Harris, and four or five other men 'of low caste, whose names we did not know, assembled there, 'who said that they were about to commit a dacoity in the house 'of Nuffur Mundle (the deceased), at Chuttoordihee, where much 'plunder was obtainable, and wanted me to accompany them. 'I said I am a chowkeedar and cannot go. Whereupon Heera

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'(No. 29) declared that he would cut me to pieces, if I refused. 'Thus intimidated, I was forced to become their accomplice, and 'agreed to go. The whole party then girt up their loins, and 'took *lattees* in their hands, with the exception of Heera, who 'was armed with a sword, and went off to a *bur* tree, which is 'near the prosecutor's house, at Chuttoordihee. As I would 'not enter the house, for fear of being recognized, Heera allowed 'me to remain under the tree, but placed a man to guard over 'me, to prevent my flight, whose name I don't know. The rest 'of the party went over to the house, kicked the door open 'and entered it, with the exception of Nuffer (No. 33), and 'Debee (No. 32), who remained outside, on the space between 'the door and the road. During the course of the *loot*, the 'deceased Nuffur Mundle made resistance, by which the dacoits 'were so disturbed, as to be unable to plunder the house as 'completely as they wished. Thus, when they ran out of the 'house and back to the *bur* tree, they brought nothing with 'them but a few large and small *kutooras* and *thalees*, and 'some clothes. Bhowanny Harri (No. 28), said to his brother 'Heera (No. 29), did you succeed in striking that rascal Nuf-'fur, or not? the latter replied, that he had wounded deceased, 'before he left the house. After this conversation we all went 'off to an uninhabited village, named Chatergaon, where there 'was heavy jungle. There Heera Harri (No. 29), gave Nuffur '(No. 33), and Debee (No. 32) Manjees, a *kutoora* and a *thalee*, 'and me a *kutoora* and a small cloth. The rest of the plunder-'ed property was taken by the other parties, but no regular 'division of it took place. Heera (No. 29) then observed, that 'he would certainly be traced out and seized, as he had left the 'scabbard of his sword, and the cloth he had on his head, at 'the prosecutor's house. I then saw that there was no scab-'bard upon Heera's sword. After that, we separated, and Nuf-'fur (No. 33), Debee (No. 32) and I made over what we had 'received to one Kokil Sooree, at the village of Doomra. I did 'not bring back any of the things to my own house, but I do 'not know what Nuffur (No. 33), may have done. Kokil 'told us he would settle about the price we were to get for 'the property afterwards. When I joined the dacoits, I carried 'a *lattee* only. None of the party had coloured their faces, 'by way of disguise, but cloths were bound round their heads. 'The scabbard and cloth, shown to me, belong to Heera Harri '(No. 29). I never was apprehended in any previous case. 'The *kutoora* found in my house, which the prosecutor says 'is his, is my own property, as all the inhabitants of the village 'know. This is my confession, and I have made it of my own 'free will, &c.'

"Two of the witnesses to this confession, *viz.*, Nundo Mundle No. 10, and Gudie Mundle, (1st,) No. 12, said, in answer to

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questions put to them by the officiating joint magistrate (after they had deposed that the prisoner confessed voluntarily), that he had refused to acknowledge complicity at first, and that his eventual confession was the result of his temporary removal by the *bukshee* and *ghutwals* to a distance from, and out of sight of, the *mujlis*, or assemblage of villagers.

"The witness No. 10, and another named Sonatun Mundle No. 11, stated, in reply to questions put to them by me, that there had been a quarrel between the deceased and the prisoner Nuffur (No. 33), about the latter's *ghutwalee* lands, which had been in the occupancy of deceased, during the life of the *ghutwal's* father, but were taken from him, and given up to the *ghutwal*, by order of the magistrate, after his father's death. Both witnesses also declared that there was a subsistent quarrel at the time of the dacoity about a debt, for realization of which, process had been served by deceased upon prisoner No. 33, a short time before.

"The foujdaree confession of prisoner No. 27, differed from his Mofussil one, in the following particulars :

"*First*,—He said that Heera (No. 29), threatened him with death if he peached, and that the property was divided after the dacoity took place, but he would not take the *kutoora* and cloth allotted to him.

"*Secondly*,—That Heera (No. 29), killed the deceased with his sword; that he struck him in his presence; that he heard deceased cry out, when he received the blows; that Heera had inflicted them; that there was blood upon Heera's sword; and that deceased fell inside his own compound.

"*Thirdly*,—That he informed the *phandeedar* of what had occurred, the day after the dacoity.

"*Fourthly*.—In answer to questions put to him by the officiating joint magistrate he said, that the mohurir had squeezed his chest to force him to confess; that the *ghutwals* had, by that official's orders, tied him hand and foot in the Chuttoordihee jungle, and tortured him, by placing a long heavy beam upon his neck, which they pressed down, and that his whole confession was true, except such portions of it as implicated his cousins Nuffur Manjee (No. 33) and Debee (No. 32).

"The deposition given by the deceased at the *phandee*, on the day after the dacoity took place, stated that Nuffur Manjee (No. 33), Debee or Deboo Manjee (No. 32), with a short Harri and a light-complexioned Harri, and about fourteen dacoits, had attacked his house the night before, when the aforesaid Debee Manjee (No. 32,) and a dark Harri* had wounded him with swords. He added that all the Harris of the village of

* Heera (No. 29), is of lighter complexion than the other Heera.

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Damoodurpore were assisting in the dacoity; and that he would be able to recognize them, if he saw them.

"The deposition given by him before the officiating joint magistrate was similar, but more detailed; it described the attack nearly, and in the same terms, as the prosecutor, and then went on to say that Nuffur Manjee (No. 33) and Debee Manjee (No. 32), inhabitants of Bauzka, with two Damoodurpore Harris, whose names he did not know, but whom he could recognize in the event of their apprehension, seized him, as he was standing in the north-doored apartment, and dragging him out, partly by his hair, and partly by his clothes, began striking at him with swords, and ordering him to say where his money was; that on his asking where he was to find money, the persons aforesaid inflicted the wounds described in the native doctor's report, and struck him to the ground, and that the dacoits went off, towards the north, as soon as they had plundered sufficiently. To the officiating joint magistrate's questions he answered, that Nobin (No. 27), was the chowkeedar of his village, and that he had not gone his rounds on the night of the dacoity. It is to be lamented that the officiating joint magistrate did not make the wounded man name the particular individuals who had actually struck him with their swords,

"The depositions of the mohurir and jemadar, who conducted the inquiry on the spot, need not be given in detail, as they are not discordant, and nearly coincide, with that of the prosecutor, in regard to what occurred after the dacoity took place; but the following additional noticeable circumstances will be found in them, *viz.*, Chowdry Harri (No. 31) and Bahadoor Harri (No. 30), who live in the same hut, are father and son, and not brothers, as stated by prosecutor, whereas Heera (No. 29) and Bhowanny (No. 28) Harris, who also live together, have the latter degree of relationship to each other. The prisoners Nuffur (No. 33) Debee (No. 32) and Nobin (No. 27), are cousins and live at Bauzka, in two huts, which adjoin each other. There are no other Harris at Damoodurpore, besides the prisoners of that caste, among whom Heera Harri (No. 29), appears to be the richest and best clothed, and has the best house. The hut of Nuffur (No. 33) and Debee (No. 32), at Bauzka, is of an inferior description, and they appear to be poor. The first habitations searched were those of Nuffur (No. 33), Debee (No. 32) and Nobin (No. 27). The two latter prisoners were not present, but were brought in on the 15th Kartick, or the third day after the dacoity, the former from Kellea Bella, and the latter from desert jungle, in which he appears to have been hiding or wandering. The eye-witnesses Nos. 1, 2 and 3, did not come forward and depose to having recognized the dacoits, until the prisoner Nobin (No. 27), had confessed, nor does it

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appear that the mohurir and jemadar asked for any information from the villagers, before the said confession had been obtained. The houses of the Harri prisoners were all searched, and their persons taken into custody, because the deceased Nuffur had deposed to the complicity of all the Harris of Damoodurpore, in the dacoity. All the said prisoners were sent in to Bancoorah, to be paraded before the deceased, for recognition, but he died before he could see them. Nobin (No. 27), had not yet been caught when they were *chalaned*. The scabbard and cloth, found at the time of the inquest, could not be brought home to Heera (No. 29). Some of the depositions were written by a hanger-on of the thanna named Tarachand Raie. Both mohurir and jemadar stated, with reference to the accusation of ill-using Nobin (No. 27), to make him confess, that the story told by the witnesses Nos. 10 and 12, *viz.*, Nundoo and Gudaie (1st) Mundles, was quite false ; that the said prisoner was never taken out of sight of the *posse comitatus* at all, and only out of their hearing for a very short time, after he had winked at the jemadar, and shown signs of an inclination to confess. Both also asseverated that no sort of torture or oppression had been resorted to, though they acknowledged that the prisoner was silent and unwilling to say anything, when first questioned.

" A report of the mohurir and jemadar, dated 31st October, or 15th Kartick, shows, that the house of Kokil Sooree at Doomra, was searched without result.

" The prisoner above-named, when called upon for his defence by me, denied his Mofussil confession, and pleaded *alibi*, but adduced no evidence in support of it. With regard to his confession before the officiating joint magistrate, he stated, that he did not recollect what he had said to that officer, in consequence of the state of disturbance into which his ideas had been thrown by ill-treatment of the *ghutwals*, described at the end of the confession aforesaid. He named three witnesses to the fact of the *kutoora*, found in his house, being his own property, and one who would, he said, depose to the violence inflicted upon him. These persons gave the desired evidence; but it was quite unworthy of credit.

" The prisoners Bhowanny and Heera Harris, (Nos. 28 and 29) made the same defence, *viz.*, that the property found in their house was their own, and that they had been at home on the night of the dacoity. Three witnesses were named by them, whose depositions were not worthy of credit.

" Bahadoor and Chowdry Harris, (prisoners Nos. 30 and 31) made the same defence as Nos. 28 and 29, with a similar result.

" Debee Manjee (prisoner No. 32) pleaded *alibi*, and that the property found in his house was his own, but his witnesses did not satisfactorily substantiate either statement.

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"Nuffur Manjee, (prisoner No. 33) affirmed that the property found in his house was his own, and that he was at home on the night of the dacoity; but the evidence he adduced was, apparently, collusive and untrustworthy.

"Modhoo Harri, (prisoner No. 34) contented himself with a mere denial of complicity, and named no witnesses.

"Jadoo Harri, (prisoner No. 35) denied complicity, and said that he was at home when the crime was perpetrated, but named only one witness.

"The whole body of evidence adduced goes to prove the crime of dacoity attended with murder against all the prisoners, but different degrees of criminality, which I shall endeavour to discriminate.

"The prisoners Nuffur (No. 33) and Debee (No. 32,) particularly named among the sword-wielders, in the two depositions of the deceased Nuffur, were his old enemies, and doubtless the instigators of the Harris to the dacoity. I have a strong conviction that the object of the attack, made upon the house of the deceased, was much more to escape from debt, and gratification of their old grude, by his murder, than plunder, and that the Harris were pitched upon by the above prisoners, as their coadjutors, in consequence of the fear in which they were held by the neighbouring villagers. This fear is sufficiently proven by the fact that the eye-witnesses to the dacoity would not come forward, until Nobin (No. 27), had been induced to confess. Also by the tenor of the two depositions of the deceased, which induced the belief that he knew the names of the Harris, but would not mention them, as long as he had hopes of recovering from his wounds. The court will observe, that the prosecutor, all the eye-witnesses and various others affirm, that the deceased named Heera Harri (No. 29), when first questioned, as one of the persons who had wounded him. As Nuffur (No. 33) and Debee (No. 32) were his known enemies, and had no great influence nor daring of their own, he was not afraid to name *them*, in his written depositions, but with the Harris, and Heera in particular, who was a well-known character, the case was different. The latter had succeeded in escaping justice before,* had a consequent *prestige* of intangibility, and a rupture with him, and his band, was to be avoided as much as possible. It is true that the deceased declared all the Harris of Damoodurpore accomplices in the crime, but by doing so he avoided particularizing Heera; and his mind was, very probably, not clear

* He was suspected of dacoity in a case before the magistrate, in 1851, and his house was searched, but without result. Though not a professional dacoit, he appears to be well-known as the next thing to it in Bancoorah.

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enough to perceive, that involving them collectively, was little different from naming them individually. The wounds found upon deceased were five in number, large and small, and appear, from their nature, to have been inflicted by more than one swordsman, eager to get his share of blood. The scratch on the chest was, evidently, caused by a blow that fell short, and the cut on the finger was, the deceased said, the result of a last contemptuous thrust. Again, the blows which alighted upon the arm, were evidently aimed at the head, and death was their object. That which divided the forearm must have struck deceased down, and he was, probably, only left alive, because it was supposed, in the dubious light, that his head had been attained by it. The severe wound on the leg might have been given by one of the four persons, mentioned in the second deposition of the deceased, from behind. There appears to be sufficient evidence that Nuffur (No. 33), who is a *ghutwal* and police officer, and Debee (No. 32) bore swords when they left the prosecutor's house, and the small value of the property carried off induces a suspicion that its removal was merely intended as a blind to the actual nature of the crime intended. Taking all the circumstances into consideration, I think no less punishment than that of death should be inflicted upon the said two prisoners.

" Prisoner No. 29, Heera Harri, lies under the same load of evidence as the above, but he had no previous enmity to incite him, and he has not been particularly mentioned in the depositions of the deceased. Such being the case, the actual striking cannot be brought home to him, though it is even more clear than in the case of the above two prisoners that he bore a sword when leaving the plundered dwelling. Moreover, he was the evident leader of the Harris, who would never have undertaken the robbery without his sanction. These points duly considered, I would sentence him to labor in irons, beyond sea, for the term of his natural life.

" Nos. 30, 31, 34 and 35, *viz.*, Bahadoor, Chowdry, Modhoo and Jadoo Harris, were certainly present; for the evidence of the eye-witnesses, the two depositions of the deceased and the futility of their defence* forbid us to believe otherwise; but I conceive their criminality to be of a fainter dye: their object was plunder, and they followed Heera (No. 29) without knowing that a murder was to be committed. I would sentence each of them to fourteen (14) years' imprisonment, with labor in irons, in banishment.

" The evidence against the prisoner Nobin (No. 27,) consists of his two confessions, the discovery of a portion of prosecutor's

* Property of the plaintiff was also found in the houses of Nos. 30 and 31.

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property in his hut, and his prolonged absence after the dacoity. There is great verisimilitude in that part of the confessions which goes to show that he was an unwilling witness of the crime and took a share of the plundered property, out of fear. He is a weak, abject-looking, creature, likely to have acted precisely in the way described by himself, and it is very probable that the dacoits forced him to accompany them, as he says they did, in consequence of the terror and vacillation he exhibited, when the so-called dacoity was proposed. As he lived in daily intercourse with his cousins Debee (No. 32) and Nuffur (No. 33), he must have immediately perceived that any attack, made by them upon the house of the deceased, was likely to end in murder, and that, being the chowkeedar of Chuttoordihee, his recognition, during such an affair, was likely to lead to his own destruction. It was under this impression that he urged the nature of his office, and said he would have nothing to do with it, and it was the apparent likelihood of his immediately peaching, or giving the alarm, that made Heera (No. 29) first force him into assent with his sword, and, subsequently, set a guard over him, while the crime was being committed. It appears to me that the property the prisoner took at Chatergaon, as his share of the spoil, was forced upon him by his fears. These men had slain Nuffur, he had heard his cries, what should prevent their slaying him if he did not take what was offered. Moreover, I trace anger against Heera in the confessions; for the court will not fail to observe that he endeavoured to fix the murder upon Heera alone,* while he did what he could to shield his cousins, by affirming that he never entered the house. His prolonged absence after the dacoity was caused by the same abject fear that had influenced him all through, and I do not believe that it required much more than encouragement to make him confess, and ease his mind, when he was at last apprehended. As, however, all the extenuating considerations above detailed, depend upon the truth or otherwise of the confession of prisoner No. 27, and there is no possibility of ascertaining whether they are true or the contrary, it appears to me that he cannot escape equal punishment with Nos. 30, 31, 34 and 35, *viz.*, fourteen (14) years' imprisonment with labor in irons, in banishment; but I would not recommend any enhancement, in consequence of his being a chowkeedar, because it is highly probable that he was prevented from doing his duty *vi et armis*, in the first instance, and by a fear, too great for his nature to overcome, after the crime had been committed.

"One dereliction, and one act in contravention of Standing Orders, are attributable to the police officers employed in this

* Particularly in his confession before the officiating joint magistrate.

case. *First.*—They should have questioned the villagers in regard to recognition of the dacoits, immediately after the *sooruthal* had been taken, and not have put off that part of their inquiry, until after the houses of the persons named, and suspected, by the wounded man, had been searched, and one of the prisoners, *viz.*, No. 27, had confessed. The course pursued by them, at first, led me to suspect the evidence of the eye-witnesses, but my doubts were afterwards removed, on consideration of the whole case, and the character of the prisoner Heera (No. 29) in particular; *secondly*, they have been repeatedly warned not to employ mere hangers-on at the thanna, in writing depositions, &c.

"I have sent a copy of the above paragraph to the officiating joint magistrate, and directed his particular attention to its contents."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The following is an analysis of the proof against the prisoners in this case:

Prisoners' Names.	*Proof by recognition and by whom recognized.*	*Proof by finding of property in possession and where found.*
Nobin Chowkeedar, *N. B.* This prisoner confessed to the police and made some admissions to the magistrate. ..	.. ..	No. 2. A *kansa batee* in his north house.
Bhowanny Harri, ..	The murdered man said, that he recognized a fair Harri, supposed to be this man, .. Gopaul, deceased, and Birjoo, deceased, in foujdaree, and Birjoo's witnesses, assert they recognized this man, ..	No. 6. A *kansa batee* in east house. No. 7. A *saree* in ditto, in a chest. *N. B.*—These men are relations, and live in the same homestead.
Heera, ..	Supposed to be the black Harri alluded to by the murdered man. Identified by Gopaul, deceased, Birjoo, deceased, and Govind, witnesses, ..	
Bahadoor, ..	Identified by Gopaul and Birjoo deceased, witnesses in foujdaree deposition, ..	No. 3. A large *kansa batee*. No. 4. A *saree*. No. 5. A ditto. (In east house.) *N. B.*—These two men live in the same homestead.
Chowdry, ..	Identified by the same witnesses, ..	
Deber, ..	Identified by the murdered man, as also by Gopaul deceased and Govind, witnesses, ..	No. 1. A large *batee* in north house. *N. B.*—These two men are relations, and live in the same homestead.
Nuffur, ..	Identified by the murdered man, and by Gopal and Birjoo, deceased, and Govind, witnesses, ..	
Modhoo, ..	Ditto by Gopaul and Birjoo, deceased.	
Jadoo, ..	Ditto by Gopaul and Birjoo, deceased, and Govind.	

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Case of NOBIN ROY MANJEE, Chowkeedar, and others.

"The instinct of self-preservation prompts dacoits to follow two or three general rules in their expeditions, *viz*, if any of the party are known to the person robbed, those persons do not go inside, but remain as pickets or *ghautydars*. Immediately the plundering is over, and before they come out of the house, they put out their lights, and until all danger is blown over they bury or otherwise conceal their booty. It will be found from reference to the revelations of accomplices in cases in which, from the recovery of large portions of plunder, and other circumstantial proof, the truth of them can be depended upon, that these rules are very generally followed. There may be exceptions to them; but I view with great suspicion evidence which militates against them.

"To believe the evidence in this case it would be necessary to believe that the whole, or certainly half the gang, neglected all ordinary precautions against detection. On general principles, therefore, I do not think the evidence trustworthy. A closer examination of the statements of the individual witnesses, only confirms that view.

"First, with regard to the dying declaration of Nuffur Mundle. This person stated that he recognized the prisoners Debee and Nuffur Manjee. It comes out in evidence that these persons had had suits in court with him. It is very common for a Bengalee whose house has been robbed to fancy that his enemy was the person who did it; and from believing a thing to positively asserting it, is not a difficult step to him. This person further stated that he recognized *all* the Damoodurpore Harris, which is so highly improbable, that it is sufficient to indicate that he was not a very scrupulous witness.

"I have next to consider the evidence of Govind, and that of Gopaul and Birjoo, taken in the foujdaree, but admitted in consequence of their death, before the trial. These persons did not come forward until the conclusion of the inquiry. They are witnesses to the search of the houses and to the recognition of the property as that of the prosecutor, and it seems as if it had been considered at the last as well that they should give evidence to recognition of the dacoits while they were so employed. The important fact of their having recognized some of the dacoits would not have been so long concealed if it had been true.

"They depose that, hearing, the noise of the attack, they went and sat on a half-built wall close to the prosecutor's house, and at a distance of five or seven cubits recognized, out of the dacoits, at the time of their exit, one of them eight, one of them seven, and the other six prisoners, by the light of the *mussals*. Six of the men so recognized were so by all three witnesses! Now, I cannot believe that three Bengalees would, while such atrocities were being committed by an armed gang, in the dead

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of the night, have approached, seated themselves down, and allowed the dacoits to pass so near to them, as six or seven cubits. To cast a greater suspicion on their story, one of them says that the dacoits continued their route towards Rajgaon, continuing to burn two *mussals;* that they, in fact, held out a signal to enable the villagers to follow, and trace them. The property recovered is all of the most ordinary kind and is claimed by the prisoners as their own, and proved to be so by their witnesses. If really it belonged to the prosecutor, it is a most singular coincidence that not one of the prisoners took the precaution to hide his booty, although it is asserted that they are not new hands at depredation.

"As to the confession of the prisoner Nobin, the sessions judge states that 'he is a weak, abject-looking, creature.' Two of the attesting witnesses to his confession in the Mofussil state he at first denied all knowledge of the dacoity, and was then taken away to a distance, and brought back after an hour. The statement he then recorded has all the appearance of one given at the dictation of the police, on the assurance that it would not do him any harm, *viz.*, to the effect that he was forced to accompany the party, and that he took no part in the plundering, but stood at a distance.

"The statement this prisoner made to the magistrate, is very unconnected, and he there asserted that he had been tortured by the police, and that the property found was his own.

"It is impossible that this court can even convict the prisoners, much less sentence two of them to death, as recommended, on such unsatisfactory proof. They are, therefore, acquitted, and the property found in their respective houses will be restored to them."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

TRIAL No. 4.—DINNONATH MITTER (No. 2, APPELLANT) AND RAM CHURN MITTER (No. 3).

TRIAL No. 5.—DINNONATH MITTER (No. 2, APPELLANT).

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May 5.

Case of DINNONATH MITTER (appellant) and another.

Sentence of fourteen years' imprisonment for theft, by administering intoxicating drugs, affirmed.

CRIME CHARGED.—TRIAL No. 4.—1st count, theft of property valued at rupees 19, from Bama Khanky, whilst she was in a state of insensibility, caused by intoxicating liquors administered by the prisoners; 2nd count, accessaries to the above crime both before and after its perpetration; and 3rd count, receiving the stolen property aforesaid, knowing it to have been so stolen.

TRIAL No. 5.—1st count, theft of property valued at rupees 93-8-0, from Lukheemony Khanky, whilst she was in a state of insensibility, caused by intoxicating liquors administered by the prisoners; and 2nd count, accessaries to the crime aforesaid both before and after its perpetration.

CRIME ESTABLISHED.—TRIAL No. 4.—No. 2, accomplice in the theft charged, and No. 3, privity to the theft charged.

TRIAL No. 5.—No. 2, accomplice in the theft charged.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 12th February 1852.

Remarks by the additional sessions judge.—TRIAL No. 4.—"The following remarks were made when the case was referred, as it was necessary to do respecting Nund Koomar, who has been sentenced to transportation for life by the Nizamut Adawlut.*

"Bama Khanky lives in Bhowanipore. Towards the end of Kartick she was visited for some days by the prisoners Nos. 1 and 2, (No. 1, of whom has been sentenced to transportation for life) who drank at her house, and one day they were joined by Ram Churn, but he left before the others did so. Bama Khanky was that night made drunk and was robbed of four silver *mulls* and a gold *nuth*, valued together at about rupees 15. Prisoner No. 1 sold the ornaments to Greedhur, who has a shop at Kidderpore, whence the *mull* and some pearls, which were in the *nuth*, were recovered. One of the partners in the shop says that prisoner No. 2 was also present when the ornaments were bought. Prisoner No. 2 confessed on the 28th November before the police that he was present and consented to the theft, and on the 1st December he said that he was present when Madhub

* *Vide* Reports for February 1852, pages 162 to 167.

(No. 1) stole the property, and that Madhub told him that he had stolen the ornaments and had sold them. Prisoner No. 3 confessed before the police that he was privy to the crime, and before the magistrate he said he was present at the drinking, but that he left the house before the theft took place, and gave his advice against committing it, but that the others brought home the property and sold it. The prisoners live together in the same house, and were apprehended owing to information which was given by an ex-darogah. They have no ostensible means of gaining a livelihood, and their habits are very irregular, and Madhub had been transported for seven (7) years, according to a sentence of the Supreme Court of Calcutta as he himself allows. I have sentenced Ram Churn to five (5) years' imprisonment, because he continued to live with the prisoners after he was aware that they joined in obtaining a livelihood by such illegal means."

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Case of DINNONATH MITTER (appellant) and another.

TRIAL No. 5.—"In this case two prisoners made Lukheemony Khanky drunk at her house in Shapore (*alias* Taleegunge.) Her neighbours saw her in the morning before she had recovered from the effects of the drugs which she had drank, and heard of her loss, but no information was given to the police. Her neighbours say that they had seen the prisoners at Lukheemony's house, which they, the prisoners, appear to have visited for some days. The crime was first made known to the police by the confessions of the prisoners. They confessed before the police and the magistrate. They sold the stolen property, but differ as to the amount which they obtained for it, one says that they got rupees 41 for it, and the other says that they got rupees 80. The man (witness No. 11), who appears to have been pointed out by the prisoners as having bought the property, which consisted of ornaments, denies the transaction, but allows he has dealings with the prisoners. The circumstances of the case leave no doubt on my mind about the guilt of the prisoners, although the witness No. 11 contradicts their statements about the disposal of the property. Nund Koomar Bose, prisoner No. 1, has been sentenced to transportation for life. The prisoner No. 2, having been convicted in two cases, is sentenced, under Regulation XV. of 1814, Section II. Clause 1, to fourteen (14) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner Dinnonath Mitter has now appealed, but the papers have not been sent up, however it is not necessary to call for them, as I find from a note recorded at the time the case was before me on the reference of the sessions judge, that I had then fully considered the case as against Dinnonath, and that I concurred with him.

"In his petition of appeal the appellant has advanced nothing to alter the view I then took. His appeal is therefore rejected."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge*.

KIRTARUTH LOLL

versus

AJOODHEA ROY (No. 7), SOOKYE (No. 8), RAM DUTT (No. 9), MUSST. JEEREEA (No. 10), RUKTOO (No. 11), PULUCK PANDY (No. 12) AND MUSST. DOOKHNEE (No. 13).

1852.

May 7.

Case of AJOODHEA ROY and others.

A wife was acquitted of accessaryship after the fact, because it was presumed that she acted under the influence of her husband, whom the Nizamut Adawlut convicted of the burglary and theft.

CRIME CHARGED.—Nos. 7, 8, 9, 11 and 12, 1st count, burglary and theft of cash and property, valued at rupees 1,431-12-0; and 2nd count, knowingly receiving and being in possession of stolen property, and Nos. 10 and 13, accessaries after the fact to the aforesaid crime.

Committing Officer, Mr. R. H. Russell, joint magistrate of Chumparun, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 30th March 1852.

Remarks by the sessions judge.—"I refer this case, because I dissent with the *futwa*, which acquits the prisoner Ram Dutt, whereas it appears to me that there is sufficient proof against him (under all the facts of the case) for a conviction upon the second count.

"I may state at once that in this case there is no direct evidence against the prisoners, and the only thing which has been fairly brought home to any of them is having possession of stolen property. The facts are shortly as follows:—On the night of the 24th February last, the house of the prosecutor was burglariously entered and robbed of money and other articles (including some rice) to the value of rupees 1,431-12-0. He employed several persons to trace the things, and learnt afterwards from one of them, a man named Seedye (witness No. 21), that he had heard from Ruktoo that he, Ram Dutt and others had been engaged in the affair, but that he had got only some rice, whilst they had kept all the cash. Upon this he, (prosecutor,) desired Seedye to go with a man named Naek and bring him some proof that Ruktoo really had some of the property; whereupon they both went, and in the end came back, bringing with them a small quantity of rice, which he, (prosecutor,) knew to be his; upon which he applied to the police, and begged that the thing might be inquired into.

"Upon this the police took up the matter, and first of all searched the houses of Ruktoo, (No. 11), and Sookye, (No. 8), and in both of them got some portions of the property stolen; and afterwards Sookye gave up rupees 43, which were concealed

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in a rag in a wheat field. After this they searched the houses of Ajoodhea, (No. 7) and Ram Dutt, (No. 9,) and in a hollow or ditch near the house of the former, they found a pot containing rupees 215, of which Ajoodhea said rupees 15 were his, and the rest part of the stolen property. In Ram Dutt's house itself nothing was found, but in his *morae* (some distance from it), they got the sum of rupees 164, buried in two different places; and subsequently his wife (Musst. Jeereea, No. 10,) gave up a *lotah* containing rupees 400, which she admitted was stolen, and had been given her by her husband. In Puluck's (No. 12) house they found only some rice; but he also confessed to the police that he had been engaged in the thing, as also at different times did the prisoners Ajoodhea, Musst. Jeereea, Ruktoo and his wife, Dookhnee, (No. 13) (at least she said that she would give up what she had, if she was not sent in,) and most of them named Ram Dutt as having taken a leading part in the thing.

"It is certain, however, that the whole of them denied these confessions before the magistrate; but still as, independent of this, there is clear evidence that they gave up portions of the stolen property, I have, in concurrence with the *futwa*, convicted the prisoners Sookye and Ruktoo on the second count charged against them; and both the women with being accessaries to the theft after its commission. Ajoodhea and Puluck I have also, in concurrence with the *futwa* (as nothing *clearly identified* was found with them) released; and as I dissent with the moulvee as to his finding in the case of Ram Dutt, I refer the case solely as regards him.

"Ram Dutt has already once before been in jail; and he was a second time committed to take his trial in April 1849, at the sessions, as concerned in a heavy case of theft, though he was acquitted, and although nothing was actually found in his house of the things stolen in this case, still money was found buried in two places in his *morae* (a shed or hut for watching the crops when ripening) and his own wife (as has been clearly proved) gave up a *lotah* full of rupees (400) which had been hidden in a tobacco field, (a dead dog being placed over it to mark the spot) and which she said she had got from him. With reference therefore to the above facts, and as I consider him guilty on violent presumption of having knowingly been in possession of stolen property, I would recommend in his case (as in that of Sookye) that he be sentenced to imprisonment for four (4) years with labor and irons from the date of the completion of the trial.

"Sookye having once before been in jail, I have sentenced to four (4) years, Ruktoo to three (3), and both the women to two (2) years' each, the whole of them with labor, &c."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"It is satisfactorily established that the prisoner Jeereea, the wife of the prisoner Ram Dutt, gave up a *lotah* con-

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taining Sicca rupees 400, of the Furruckabad, Benares and Moorshedabad coinage, of which kinds many were stolen; and admitted that she had received them from her husband, believing them to be stolen, and had buried them. It is also proved that rupees 164, of the Benares coinage were found buried in two places, in the shed of the prisoner Ram Dutt, in his presence. He is indicated in the confessions of the other prisoners as concerned in the robbery; he can give no account of how he came by the money; and the recent possession of it is therefore sufficient evidence to warrant his conviction on violent presumption of the burglary and theft. I am of opinion that Musst. Jeereea is entitled to her discharge; she concealed the stolen money, but she got it from her husband. The women of India are so completely under the power of their husbands, that it is only proper, I think, to presume that the prisoner acted under the power of her husband in this case. I direct her discharge. I convict the prisoner Ram Dutt of burglary and theft and sentence him, as recommended by the sessions judge, to four (4) years' imprisonment with labor and irons."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

KHETU MALIK.

1852. May 7. Case of KHETU MALIK.

The denial on oath of the prisoner, that he had been a witness in another case for a party, held to be penal perjury. The mitigated sentence proposed by the sessions judge enhanced.

CRIME CHARGED.—Perjury, in having, on the 3rd March 1852, under a solemn declaration taken instead of an oath before the law officer of East Burdwan, in a case of plundering, in which Kali Chowdree was defendant and Ishur Chunder Bose a prosecutor, on being questioned whether he had given evidence in a case under Act IV. brought by Kali Chowdree against Ishur, deposed 'no;' and on being further questioned whether in that Act IV. case he had given evidence the previous day before the magistrate deposed, 'no, I did not give it;' such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. H. Patton, sessions judge of East Burdwan, on the 27th March 1852.

Remarks by the sessions judge.—"The perjury committed by the prisoner is almost as unaccountable as it is deliberate. He gave evidence in favor of one Ramkomar Mujumdar, arraigned before the court of the law officer on a charge of plunder of grain, and when interrogated by the *mookhtar* of the prosecutor,

1852. — May 7. Case of KHETU MALIK.

whether he had the day previously given testimony in the magistrate's court on behalf of Kalichurn Chowdree (a co-defendant in the plunder case) in a suit under Act IV. of 1840, brought by the said Kalichurn against his client, falsely replied that he had not, and repeated the perjurious assertion on hearing his deposition so made read over to him.

"The evidence in proof of the perjury is conclusive, and the prisoner admits the crime, pleading in extenuation that he was under the influence of opium at the time he committed the act, but cites no witnesses in support of the plea.

"As the offence was perpetrated in the court of the law officer, I tried the case with the aid of assessors, who returned a verdict of 'guilty' against the prisoner.

"In that finding I concur, and sentence the prisoner to three (3) years' imprisonment without labor or irons; but deeming the point material to the issue of the case relative to which the perjury was committed not of an important character, namely, the innocence or otherwise of Ramkomar Mujumdar as affected by the evidence of the prisoner, I consider him a fit object for mitigation of punishment, and under the provisions of Clause 3, Section IX. Regulation XVII. of 1817, refer the trial for the orders of the court, recommending a commutation of the sentence to six (6) months' imprisonment without labor or irons.

"I regret exceedingly that through inadvertency I should have passed sentence on the prisoner and included the case in Statement No. 6*, instead of submitting the record for the consideration and orders of the court. My doing so was a pure oversight, of which the court may rest assured I shall never again be guilty."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills).—"The prisoner falsely denied on oath that he had given evidence, the day before, on behalf of Kalichurn Chowdree, a co-defendant in the case, his object being to induce the court to give readier credit to the substantial part of his evidence. This species of false evidence is held to be perjury. I concur, therefore, in the conviction of the prisoner; but deeming the mitigated sentence proposed by the sessions judge too light, sentence him to one (1) year's imprisoment, with labor and in irons."

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* *Extract from a letter from the Register of the Nizamut Adawlut to the Sessions Judge of East Burdwan, No. 531, dated 22nd April 1852.*

The court, having had before them your letter, No. 91, of the 14th instant, submitting the Statements connected with the sessions of jail delivery, held by you in the month of March last observe that as you considered less than three (3) years' imprisonment sufficient in the case of Khetu Malik, No. 1, of Statement No. 6, you should, under Clause 3, Section IX. Regulation XVII. of 1817, have referred the case. You are requested to do so now in the usual mode; expunging the case from statement No. 6, and entering it in the Register of trials referred, which you are requested to submit

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

GOVERNMENT

versus

ASSA.

1852.

May 7.

Case of ASSA.

The prisoner, who murdered his wife, was acquitted by the Nizamut Adawlut, on the ground of insanity.

CRIME CHARGED.—Wilful murder of Musst. Lalo, *alias* Paglee, wife of the prisoner.

Committing Officer, Mr. E. M. Ryan, officiating principal assistant agent Governor General at Hazareebaugh.

Tried before Mr. J. Hannyngton, deputy commissioner, Chota Nagpore, on the 15th April 1852.

Remarks by the deputy commissioner.—"The informant, Subdul Durjee, states that on the morning of the 27th January, he heard an alarm, and then saw the prisoner running off with a bloody sword in his hand, whereupon informant laid hold of the prisoner and took the sword from him, and being aided by Bhikun and Junglee secured him and then sent information to the police. The prisoner was then sane.

"The prisoner pleads 'not guilty.'

"No. 1, witness Poorun Jolaha, early one morning in Magh, on a Tuesday (27th January) heard the prisoner's wife crying out that she was being murdered. Witness ran and saw the prisoner strike deceased two blows with a sword. She died immediately, and prisoner ran off with a drawn sword in his hands, and was taken up by Subdul Durjee, aided by witness and Junglee Jolaha. The prisoner was then in a state of *mental aberration (mut bhrum.)* He lost a son some months before, and since then his mind has been disturbed. He went about here and there and his wife used to bring him home and give him food. He had no dispute with his wife. She was a well-behaved woman of about forty years of age. When the police officer took the prisoner's confession the prisoner's mind was not right. He trembled. The prisoner used to go about at his own will, and did not carry any weapon. Witness does not know of any woman in the village having given wrong advice to the prisoner's wife. Witness lives within a few paces of the prisoner's house.

"No. 2, witness Junglee, corroborates the evidence of Poorun.

"No. 11, witness Mahomed Khan, native doctor, has attended the prisoner for fifty-one days in hospital; and considers him to be perfectly sane. Witness examined the body of the deceased. There were five wounds on it; they were severe and caused her death.

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"No. 5, witness Bullakee, proves the record of the inquest. Proves also the confession of the prisoner before the police officer.

"No. 7, witness Hurgobind. } Prove the confession of the
" 8, Tullasmun. } prisoner before the police officer.

"No. 10, witness Alif Khan, proves the confession of the prisoner before the principal assistant.

"These confessions are to the effect that certain women in the village had advised his wife to leave him, and on hearing of this he had killed her with a sword. In the first confession, he says that he struck the deceased three blows while inside the house, and two blows when she got out; in the second he mentions three blows only; otherwise the confessions are consistent.

"No. 9, witness Bhikun Jolaha, heard the alarm and assisted in securing the prisoner. The prisoner was asked at the time why he killed his wife, but he did not answer. Witness has known the prisoner for sixteen years. For five or six months past he has been indolent. Witness did not think him insane. His son died in May last.

"The prisoner in his defence says, that he does not remember when he killed his wife. The villagers are against him.

"There were no witnesses called for the defence.

"The jury, whose names and occupations are entered below,* find the prisoner 'guilty' as charged.

"I concur in this verdict. The evidence to the fact, independent of the prisoner's confession, is conclusive. It remains to consider the prisoner's plea, which admits the fact but denies any moral responsibility, and which therefore would require to be supported by evidence for the defence. But such evidence has *not been offered*, and any extenuation of the prisoner's act must be drawn from the evidence for the prosecution. Three witnesses, neighbours of the prisoner, have stated, that the prisoner had been for some months in a state of *mut bhrum*, to which mental aberration is precisely equivalent. They do not, however, mention any sufficient confirmation of such a fact. Since his apprehension, the prisoner has been in bad health, but the native doctor's evidence shows that he has been sane. In the demeanor of the prisoner before this court, there was no trace of insanity; on the contrary, he evinced, in the examinations of the witnesses on this point, a degree of interest incompatible with ordinary experience of the conduct of insane persons under like circumstances. Still, as the cause of the murder is wholly unexplained, as there was no previous quarrel, nor any indication of malice beyond what the law implies, I am not willing to advocate the extreme penalty of death, but rather would recommend

* Lalla Gungaram, *mookhtar*, Sheikh Joad Aleo, *mookhtar*, Sungum Lall, *mahajun*.

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that the prisoner be sentenced to imprisonment for life with hard labor in irons and in transportation."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The prisoner admits having killed his wife *Lalo*, but pleads that his mind was at that time unsound. The witnesses saw the prisoner wound his wife repeatedly with a sword and killed her on the spot, but several say that they considered him to be of unsound mind; that he wandered about in a strange manner, and that his wife often went for him and led him home; that he would sometimes work and sometimes not; that he often remains silent for a time. No reason is assigned for the act by the prisoner, nor is there apparently any reason assignable; the deceased was a respectable well-behaved woman, and gave no cause for jealousy. Before the officiating principal assistant the prisoner admitted the act, and said that the women of the village were trying to persuade his wife to leave him, and he killed her to prevent this. The demeanor of the prisoner at trial and in jail is described as not indicative of insanity. As there is no malice, and no assignable reason for the act, I am disposed to give credit to the statement of the witnesses that his mind was in some strange manner affected at the time he committed the act, and that he was not then *compos mentis*; the nature of his statement before the officiating principal assistant confirms me in this opinion. I am of opinion that the prisoner committed the act when laboring under aberration of mind and acquit him of the charge. He should, however, under Act IV. of 1849, be kept in safe custody, until the pleasure of Government regarding him be known."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

MUSST. SAROJ DOSADIN

versus

EMAMBUX KHAN.

1852.

May 7.

Case of EMAMBUX KHAN.

The prisoner in this case and in the next convicted, the one of rape and the other of aiding and assisting him in committing the offence, were sentenced to the same extent of punishment.

CRIME CHARGED.—Rape.

Committing Officer, Captain F. Simpson, principal assistant agent Governor General, Hazareebagh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebagh, on the 13th April 1852.

Remarks by the deputy commissioner.—"The prosecutrix states, that on a Saturday in the month of Aghun (15th November) last, in the dusk of the evening *(jhool bhool,)* she was on the road going from Etka village to Bara, and at a short distance from Etka where there are a *bur* tree, a smooth stratum of rock, and some fields, Kheria Kundoo,* and the prisoner Emambux, who were watching the rice crop, both laid hold of her, took her to the rock, and successively, the prisoner first, and then Kheria Kundoo, forcibly violated her person, the one holding her down while the other committed the offence. Prosecutrix was too much agitated to know which prisoner was first and which last; but both violated her. Prosecutrix made outcry, which was heard by some persons near, who came and seized the prisoner Emambux in the act, Kheria Kundoo ran off and escaped.

"The prisoner pleads 'not guilty.'

"No. 1, witness Dial Gorait, on a Saturday evening in Aghun was watching in the fields with three others, and hearing an outcry, ran and found the prisoner Emambux in the act of violating the prosecutrix, who was resisting and crying. The prisoner was then apprehended and made over to the village watchman.

"No. 2, witness Dowlut Soory, on a Saturday evening in Aghun, at dusk, was watching with Dial Gorait and others in the fields, and hearing an outcry, ran and found the prisoner Emambux in the act of violating the prosecutrix. Kheria Kundoo was holding her down with a cloth over her mouth, and on seeing persons coming, he fled. The prisoner was apprehended on the spot, and was made over to the watchman of Etka.

"No. 3, witness Bunse Ram, corroborates the foregoing evidence.

"No. 4, witness Gobind Hajam, knows nothing of the case.

* See the following Report of Kehur.

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"No. 5, witness Peerally, proves the apprehension of the prisoner by the police.

"No. 6, witness Brijlall, Mookhtar, is the farmer of Etka village; came there on the 18th November, and was then informed that the prisoner and Kheria Kundoo had violated a woman of the *Dosadh* caste.

"No. 7, witness Dial Mahto, on a Saturday morning in Aghun, was informed that the prisoner and Kheria Kundoo had violated a woman of the *Dosadh* caste.

"No. 8, witness Kurrum Chowkeedar, on the day of this occurrence had a family party, and next morning Dial Gorait and Bunse Ram Dosadh, told him that the prisoner and Kheria Kundoo had violated a *Dosadh* woman; that Kheria had fled, and that they had taken up the prisoner Emambux. Witness then went to summon Emambux, who said he was the servant of a European, and would appear when required.

"The prisoner in his defence says, that Dial Gorait, Dowlut Soory, and Bunse Ram Dosadh are his enemies, and have conspired to bring a false accusation against him, being all of one family with the prosecutrix; that on the day of the alleged offence prisoner was at Koolgo with his master.

"For the defence:—

"No. 9, witness Khedun. } Know nothing.
" 10, " Sheikh Mudum. }

"No. 11, witness Pirtum Mehtur, knows nothing of the prisoner's character. On the day alleged by the prosecutrix the prisoner was not at his master's house.

"No. 12, witness Alee Bux. }
" 13, " Khedoo. } Know nothing.
" 14, " Kartoo. }

"The jury, whose names and occupations are entered in the margin, find the prisoner 'not 'guilty.' They consider that the prosecutrix did not make a petition for ten days after the fact; that she therein stated that the offence had been committed in a hut; and that Kheria first, and then Emambux, had violated her. But now she says it occurred on a rock under the *bur* tree, and that Emambux first, and then Kheria, had committed the offence, and that the witnesses Nos. 1 and 3 are of the same caste as prosecutrix, and witness No. 4 says he knows nothing of the case.

Syed Wahed Alee, *mookhtar*.
Lalla Gungaram, *mookhtar*.
Sungum Lall, *mahajun*.

"From this finding, I entirely dissent. The charge against the prisoner was in fact made on the instant, and the discrepancy between the facts stated in the petition and in evidence does not exist. The petition merely declares that the accused persons successively committed the offence. In her evidence before the

assistant, the prosecutrix clearly states that Kheria was the first, and that he then held her for the prisoner. This exactly agrees with the evidence of the witnesses. As to the reverse order stated by the prosecutrix before this court, she ingeniously excuses it by saying that she was not sufficiently collected to be certain. The objection to the evidence from relationship to the prosecutrix is quite frivolous; and the jury overlook the witness No. 2, who is no relation. To my mind the case is clearly proved against the prisoner; and I would therefore recommend that he be sentenced to imprisonment for seven (7) years, with labor in irons."

1852. May 7. Case of EMAMBUX KHAN.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The prosecutrix charges the prisoner Emambux, with having by force committed a rape on her person with the assistance of another person named Kheria Kundoo; she further states that both these committed a rape on her. The witnesses swear to having come on hearing cries and found Kheria holding the prosecutrix and the prisoner Emambux in the act of committing a rape on her person. Kheria ran away, but Emambux was seized on the spot. I see no reason to question the truth of the witnesses' statement. I convict the prisoner Emambux of rape, and sentence him to seven (7) years' imprisonment with hard labor and irons."

PRESENT:

W. B. JACKSON, ESQ., *Judge*.

MUSST. SARO DOSADIN

versus

KEHUR.

CRIME CHARGED.—Rape on the person of the prosecutrix, and additional charge of aiding and abetting Emambux in the perpetration of a similar crime.

1852. May 7. Case of KEHUR. (*See* above.)

Committing Officer, Captain T. Simpson, principal assistant agent Governor General, Hazareebagh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebagh, on the 19th April 1852.

Remarks by the deputy commissioner.—"The prosecutrix in this case is the same as in that of the case of Emambux,* submitted to the court with my letter, No. 21, dated 19th instant.

"The prisoner pleads 'not guilty.'

"The witnesses for the prosecution, and the matters to which they give testimony being the same in this case as in the former case, I think it unnecessary to repeat the details.

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* See preceding Report, p. 757.

1852. May 7. Case of KEHUR.

"The prosecutrix proves that the defendant committed a rape on her person; and the witnesses to the fact prove that they saw the prisoner holding the prosecutrix while Emambux committed a like offence.

"The prisoner in his defence pleads an *alibi*. He had quarrelled with his mother, and had gone to Deoghur, accompanied by Megna.

"Witnesses { No. 11, Kaila Ghatwar. ,, 12, Churamun Singh. ,, 13, Thakoor Singh. } The prisoner is of good character.

"No. 8, witness Bundhoo Kundoo, states, that four or five days before the end of Kartick (beginning of November) last, the prisoner asked him to go and look for service, which witness declined doing. Prisoner then went whither witness knows not.

"No. 9, witness Tekwa Kundoo.—In last Jeyt, the prisoner came to witness's house, and after that went away somewhere.

"No. 10, witness Megna.—Two days before the end of Kartick prisoner and witness went to Deoghur, and returned in Cheyt. They used to grind wheat which they got from a merchant.

Lalla Lullitnarain, *mookhtar*.
Lalla Mita Lall, *mookhtar*.
Lalla Hurbuns Lall, *mookhtar*.

"The jury, whose names are entered in the margin, find the prisoner guilty of aiding and abetting in the rape. The evidence of the prosecutrix, supported as it is by the circumstances of the case, is sufficient to establish a very strong presumption that the prisoner did commit a rape on the prosecutrix. But the evidence of the witnesses proves only that he was aiding and abetting a rape, and therefore I concur in the finding. Seeing, however, no reason to distinguish between the guilt of the prisoner and that of his associate Emambux, I would subject both to the same degree of punishment, and I accordingly recommend that the prisoner Kehur Kundoo be sentenced to imprisonment for seven (7) years, with hard labor in irons.

"In order to explain why the cases herein noticed were tried separately, I may state that the prisoner Kehur had absconded, and was only committed on the 13th April, on which day the trial of Emambux was concluded."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—"This prisoner Kehur is committed on a charge of rape; the prosecutrix swears to the fact, as stated in the case of Emambux tried this day. The witnesses found the prisoner Kehur holding the prosecutrix, while Emambux committed a rape. I convict the prisoner Kehur of personally aiding and assisting Emambux in committing a rape on her person, and sentence him to imprisonment with hard labor and irons for seven (7) years."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

PHEDOO ROODER

versus

RAJ CHUNDER CHUCKERBUTTY (No. 1), HURRIS CHUNDER CHUCKERBUTTY (No. 2), RAMTUNNOO DASS (No. 3), RAJ CHUNDER, ALIAS KODAE DASS (No. 4), OODOYNARAIN BHAJ (No. 5), PURUSOOLLAH (No. 6), RAMLOCHUN DASS (No. 8) AND SHEIKH SULLEEMUDDEEN (No. 9).

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May 7.
Case of RAJ CHUNDER CHUCKERBUTTY and others.
Slight inconsistencies in the evidence for the prosecution not considered to affect its general value: conviction and sentence affirmed.

CRIME CHARGED.—1st count, riot attended with the culpable homicide of Surroop Chunder Rooder and wounding of Seetul Rooder; and 2nd count, accomplices in the commission of the above crime.

CRIME ESTABLISHED.—Having been present in the riot in which Surroop Chunder Rooder was murdered and Seetul Rooder was wounded.

Committing Officer, Mr. C. Mackay, principal sudder ameen, exercising powers of a joint magistrate, Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 24th February 1352.

Remarks by the sessions judge.—"The prisoners are charged with riot attended with culpable homicide, and on a second count with being accomplices therein. The following are the circumstances of the case:—It appears that the prosecutor's brother, Seetul Chunder Rooder, in Cheyt last, purchased, jointly with Seetul Chunder Audikaree, some lands from one Ram Chunder, who obtained them under a deed of gift from Bydenath Chuckerbutty. The prisoners Raj Chunder Chuckerbutty and Hurrish Chunder Chuckerbutty deny the deed of gift and claim the lands as theirs; hence the origin of the present case. The parties appear to have come into collision in Sawun last at the cutting of the first crop after the purchase, and the grain was placed in the hands of one Bholanauth pending settlement of the dispute. The question between them, however, seems to have remained unadjusted, and on the cold weather crop becoming ripe, the prisoners, Nos. 1 and 2, went with a large number of men to the lands and cut the crop, and were carrying it off to their houses when prosecutor's father (deceased) and brother remonstrated with them. They were immediately set upon and assaulted, and the former to so violent a degree that he died from the effects of it five days after. The above circumstances are deposed to by a

1852. May 7. Case of RAJ CHUNDER CHUCKERBUTTY and others.

number of eye-witnesses, who also state that they saw the prisoners commit the assault on prosecutor's father and brother. The evidence of the sub-assistant surgeon goes to show that the cause of deceased's death was the injuries he sustained from blows inflicted as he supposes with a *lattee*. The prisoners deny the charge, which they assert has been made from enmity, and plead *alibis*, to establish which, witnesses have been named by them, but neither the *alibis* themselves nor the evidence adduced in support of them, can be held to exculpate the prisoners. The *futwa* of the law officer convicts them of being present at the riot in which the prosecutor's father was killed and his brother wounded; in which finding I concur, and have sentenced them as described in column 12 of this statement."

Sentence passed by the lower court.—Nos. 1 and 2, three (3) years' imprisonment without irons, and a fine of rupees thirty (30) or labor, and Nos. 3 to 6, 8 and 9, two (2) years' imprisonment, without irons and a fine of rupees fifteen (15), or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed. They plead *alibis*, which are now substantiated. There are slight inconsistencies in the statement of the witnesses for the prosecution, but they do not appear to me to throw discredit on the general value of the evidence for the prosecution. Ten witnesses speak directly and consistently to the identity of the prisoners as being engaged in the riot.

"Seeing no reason to interfere with the finding and sentence, I reject the appeal."

PRESENT:

A. J. M. MILLS, AND R. H. MYTTON, ESQRS., *Officiating Judges.*

GOVERNMENT

versus

NUBANEE RUNDEE.

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Case of NUBANEE RUNDEE.

Murder for the sake of ornaments; sentence death.

CRIME CHARGED.—Wilful murder.

Committing Officer, Mr. E. S. Pearson, magistrate of Dinagepore.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 12th April 1852.

Remarks by the sessions judge.—" The prisoner was charged with the wilful murder of a girl, five years' of age, and pleaded 'guilty'. The child was missing about midday, when the (bathing) tank was dragged with a net and the body found, having two ropes round the neck fastened to a heavy stone, and to a peg driven into the bottom. Information was sent to the thanna by a chowkeedar, who stated that the prisoner had absconded. The prisoner's husband allowed that the stone and rope belonged to her; and the darogah was told by two boys, that she called the deceased to give her sweetmeats.

" On the following day the prisoner was apprehended at her maternal uncle's, in a neighbouring village, with the child's ornaments concealed on her person, and confessed to the murder. From her confessions, it appears that she went to the tank to clean a *thalee*, observed the child bathing, said she would bathe her, strangled her, took a cloth and ornaments from the body, then sunk it in deep water with a rope round the neck fastened to a stone, and also to a peg driven into the bottom, then concealing the ornaments by the *thalee*, went to her house, and shortly after, on the child's body being discovered, ran away, and concealed herself in the village, where her mother, maternal uncle, &c., lived.

" The greater part of the child's ornaments were found upon the prisoner, and the other small things that had probably fallen, accounted for by her. The ropes, peg and stone, by which the body was fastened, are proved to have been the prisoner's, and her confessions are proved and supported by evidence, including that of the civil surgeon.

" I concur in the *futwa* of the law officer, which convicts the prisoner of wilful murder, and declares her liable to *kissas*. It being evident, that the prisoner most deliberately murdered the child for its ornaments, and there not being any palliating cir-

1852. May 7. Case of Nubanee Rundee.

cumstance in the case, I recommend that she be sentenced to suffer death."

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and R. H. Mytton.)—Mr. A. J. M. Mills.—" The prisoner pleaded 'guilty.' She merely urged on her trial that she was not in her right senses when she committed the murder. There can be no doubt that she deliberately put the deceased, a female child of five years' of age, to death, for the sake of possessing herself of its ornaments. I see no circumstances in favour of the prisoner, to render her a proper object of mercy, and would sentence her to suffer death."

Mr. R. H. Mytton.—" I concur with Mr. Mills. The prisoner has been guilty of a most cruel and deliberate murder."

Present:

R. H. MYTTON, Esq., *Officiating Judge.*

1852. May 7. Case of Bani Madhub Bose and others.

Sentence of sixteen years' imprisonment for dacoity, upon a number of prisoners captured with plundered property in their possession, immediately after the occurrence, and for lesser periods upon others, convicted of receiving and having in possession plundered property, confirmed. Attention called to Construction No. 763, and Circular Order No. 187, dated 25th October 1844.

RAMTUNNOO RAY

versus

BANI MADHUB BOSE (No. 5), ISHUR HARI (No. 6), MADHUB THAKUR (No. 7), DABI SHAM (No. 8), UBHURSEE DOME (No. 9), NOBIN DOME (No. 10), DAMOO DOME (No. 11), KANAI (No. 12), RADHA MOHUN HARI (No. 13, Non-Appellant) and RUGHOONATH DOME (No. 14).

Crime Charged.—1st count, Nos. 5 to 13, dacoity, attended with wounding; 2nd count, Nos. 5 to 14 knowingly having in their possession plundered property acquired by the above dacoity, attended with wounding, Nos. 9, 11 and 14 being police chowkeedars at the time of the occurrence.

Crime Established.—No. 7, dacoity, Nos. 5, 6, 8, 9 and 10, dacoity and knowingly having in their possession plundered property acquired by the above dacoity, and Nos. 11, 12, 13 and 14, receiving and knowingly possessing property plundered in the above dacoity.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J. H. Patton, sessions judge of East Burdwan, on the 9th February 1852.

Remarks by the sessions judge.—" This trial was commenced on the 7th of January last, and postponed, pending the receipt of the superior court's instructions on a reference as to the legality of the commitment, in consequence of its having been made on Christmas Day. It was resumed on the 7th instant, and completed by me, the additional sessions judge, though at

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the station, having some misgivings as to his competence to continue it without express sanction. The particulars of the dacoity and the substance of the evidence adduced against the prisoners, are as follows:—On the night in question, the prosecutor was sleeping in the upper story of his house, and his mother-in-law in the lower apartment, when the house was attacked by a gang of about twenty-five dacoits. They first entered the latter room and rifled it of its contents, inflicting a blow with a stick on the head of his relative to prevent her from giving the alarm. They then plundered the adjoining apartments, and were preparing to proceed upstairs, when the prosecutor, perceiving their intention, armed himself with a bill-hook, and taking his stand near the door-way, prepared for defence. The first who approached was the prisoner No. 7, who advanced to the top of the stairs with a pointed bamboo in one hand and a lighted torch in the other. He made one or two thrusts at the prosecutor, but the latter succeeded in warding off the blows, and assumed such a determined attitude, and so effectually alarmed the neighbourhood by his cries for help, that the dacoits were induced to decamp. Towards morning the prosecutor was required to attend a summons from the police darogah, and on his reaching the spot where he was, saw the villagers assembled and the prisoners Nos. 5, 6, 7, 8, 9, 10, in custody, together with fourteen articles of the plundered property. He was also present at the search of the houses of the prisoners Nos. 11, 12 and 14, and proves the finding therein of other three items of the stolen property, as also the identity of the whole of the articles recovered, and the Mofussil confessions of all the prisoners. The first four witnesses prove the dacoity and the identity of the property; but the *sooruthal* made by the police in regard to the injury sustained by the prosecutor's mother-in-law, during the occurrence, is not substantiated, and has not therefore been appended to the record of the trial. The next five witnesses prove the arrest of the prisoners Nos. 5, 6, 7, 8, 9 and 10, in a body on their return from the dacoity, and the finding on their persons of the plundered property from Nos. 1 to 14, with the omission of one or two trifling articles. Some of them also prove that the prisoners Nos. 5, 6, 7 and 9 are men of bad repute and doubtful character, and that they were absent from their houses on the night of the dacoity. Indeed, it appears wholly owing to this circumstance, that their apprehension was thus effected; for the fact of their being missed on inquiry, caused an immediate search to be made after them, which issued in a remarkably successful arrangement for an ambuscade. Other five witnesses prove the finding of the articles from Nos. 15 to 21, some in the houses of the prisoners Nos. 11, 12 and 14, and some at the indication of the prisoner No. 13, in the house of his sister, Thakur Munnee (released as per statement No. 8), during her absence, who con-

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fessed both in the Mofussil and before the deputy magistrate, that the prisoner had deposited the articles with her; several witnesses attested the Mofussil confessions of the prisoners Nos. 5, 6, 7, 8, 9 and 10, but the attestation as respects the prisoners Nos. 11, 12 and 13, is not as clear and conclusive as it might be; and I have therefore not appended these confessions as evidence in the trial. The prisoners plead 'not guilty' before this court. The first five deny both their Mofussil confessions and the fact of their arrest with the plundered property, and declare themselves to be victims of the evil designs of the witness Kishenbulub Kunwur, the foujdaree gomashta. This is the person who first made search for them on the night of the dacoity, and planned and executed the scheme of ambush, which so signally issued in their apprehension. The prisoner No. 11 is a village watchman. He also repudiates his Mofussil confession, pleading an *alibi* and declaring that the wadded coverlet found in his house was given to him by the prisoner No. 12, on the occasion of his wife's illness. The prisoner No. 12 denies his Mofussil confession, pleads an *alibi*, and claims as his own the two articles of the plundered property found in his house. The prisoner No. 13 also denies his Mofussil confession, and the fact of his having indicated and produced the stolen articles from the house of his sister, Thakur Munnee, ascribing the act to the *phouridar*, Balgobind Singh. He pleads an *alibi* likewise. The prisoner No. 14, also a village watchman, denies the charge, pleads an *alibi*, and declares that the cloth covering found in his house was given to him by the prisoner No. 12. Twenty-five witnesses were examined on the several pleas of defence set up by the prisoners, but in no instance did they prove them.

"I have no doubt of the guilt of the prisoners. Those numbered from Nos. 5 to 10 are, for the most part, men of bad repute. They were found missing when sought on the occurrence of a dacoity in the neighbourhood, laid wait for, apprehended with the stolen property (with exception to prisoner No. 7, from whom none was recovered,) and then and there confessed the crime before the police. They are, moreover, unable to substantiate in any degree the defence they make. I convict them of dacoity, and with the exception above noticed, of having in their possession the plundered property, and sentence them to the severest punishment the law prescribes for the offence, in consideration of its extreme prevalence in this district and the surrounding parts of Lower Bengal. I convict the other prisoners of receiving and knowingly possessing property plundered in the above dacoity, from the evidence recorded against them and the fact of their inability to prove plea, and sentence them accordingly, the prisoners Nos. 11 and 14, to the severer punishment, in consideration of their being village watchmen. The legal evidence against the prisoner No. 13 is some-

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what feeble, in the absence of his Mofussil confession, but I cannot question his guilt on violent presumption, when I see him at once and without hesitation proceed to his sister's house on being apprehended, and during her absence, and without her agency, produce therefrom three articles of the plundered property. The deputy magistrate in sending the case for commitment to the magistrate, made a mistake in including the woman, Thakur Munnee, among the prisoners. He ought rather to have released her from the charge and taken her evidence on oath in support of her brother's guilt, particularly as her confession before him was not of a condemnatory nature, and amounted only to a simple receiving for the purposes of safe custody, without any guilty knowledge of the articles being feloniously acquired."

Sentence passed by the lower court.—Nos. 5, 6, 7, 8, 9 and 10, each, fourteen (14) years' imprisonment, and in lieu of stripes, to a further period of two (2) years', total sixteen (16) years' imprisonment, with hard labor in irons, in banishment. Nos. 11 and 14, each, ten (10) years' imprisonment, with hard labor in irons in the district jail, and Nos. 12 and 13, each seven (7) years' imprisonment, with hard labor in irons in the district jail.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" All the prisoners, except Radha Mohun, have appealed, urging that the foujdaree gomashta seized them under different circumstances, and then trumped up the story respecting their arrest with plundered property in their possession, with the hope of getting a reward.

" There is nothing on the record to lead to such a belief; on the contrary, the gomashta is shown to have acted with great promptitude and intelligence, and has done a most important service. The capture of the first five prisoners, with articles of plundered property in their possession, is fully proved. They made full and circumstantial confessions to the police, and those confessions have been properly verified. There are no grounds whatever for interference with the conviction and sentence passed on them.

" The judge has rejected the confessions of the prisoners Damoo and Kanai, as not being properly verified, but he has convicted these prisoners of having plundered property in their possession, and sentenced the first to ten (10) years', and the second to seven (7) years' imprisonment. The articles found in their possession are a coverlet in the possession of Damoo, and a *cansha rekaby* and copper *kosha* in the possession of Kanai. These are articles which may, without suspicion, be possessed by such persons. It would have been the better course, therefore, if the sessions judge had, according to Construction No. 763, called in the writer or the police officer, before whom they were recorded, to verify their confessions, as he was not satisfied with

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the evidence of the subscribing witnesses. The prisoner Rugoonath lives in the same homestead with Damoo and Kanai, and the outer covering of the coverlet was found in his possession. He admitted that he knew that it was plundered property, nevertheless the subscribing witnesses to his confession were not entered in the calendar or examined. This was an important omission.

"Were it not that the proceedings in this case are free from even the shadow of suspicion, the above noted omissions might have been fatal to the conviction.

"Under the existing circumstances, I do not see sufficient reason to interfere with the conviction and sentences passed.

"The judge is requested, in future, to put a mark in the calendar opposite the names of each of the witnesses examined at the trial, as enjoined by Circular Order, No. 187, dated 25th October 1844."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

NARAIN SANTRA

versus

GUNGARAM DASS, (No. 2 APPELLANT), NURAIN DULLYE (No. 3), BYDEE DULLYE (No. 4) AND PUCHOO PAUL (No. 5).

1852. May 7. Case of GUNGARAM DASS (appellant) and others.

The sentences passed upon all the prisoners (appellant and non-appellants,) affirmed by the Nizamut Adawlut.

CRIME CHARGED.—Burglary, in having forcibly entered into the house of the prosecutor's master, Fuqeer Chand Mytee, by making a hole in the wall, and stealing property to the value of rupees 59-2-0; 2nd count, aiding and abetting as accomplices in the above burglary; and 3rd count, No. 5, knowingly having in his possession property acquired by the above burglary.

CRIME ESTABLISHED.—Burglary.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 24th February 1852.

Remarks by the sessions judge.—"On the night of the 27th November 1851, a burglary was committed in the house of the prosecutor, by digging a hole in the wall, and property carried off to the value of Company's rupees 59-2-0. The prosecutor was awoke by the noise, and after collecting several neighbours, proceeded in search of the thieves. On the high road they fell in with four men, whom they challenged and demanded who they were, and their account of themselves being unsatisfactory, they arrested them and took them to the thanna. Before the darogah

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the prisoners Nos. 2, 4 and 5 confessed to having committed the robbery in company with one Kalee Paul, and the prisoner No. 3, Nurain Dullye, that Kalee Paul had made his escape with the property when they were arrested, and that some brass utensils, which were not convenient to carry, had been buried near some water. These articles the prisoner Puchoo Paul subsequently pointed out to the police. Before the magistrate the prisoners repeated their confessions. In this court they all four plead 'not guilty', and set up an *alibi* in defence, which they are unable to substantiate. The prisoner No. 3, in his defence in the Mofussil and before the magistrate, admits his being in company with the other prisoners when arrested, and his knowledge that they had property in their possession, which excited his suspicion and led him to inquire where they had got it. His admission, though not a confession of being an accomplice, is corroborative of the confessions of the other prisoners, on which prisoner No. 3 is implicated. The confessions are substantiated by the evidence for the prosecution and the circumstances elicited on trial. The assessors convict the prisoners of the charges preferred against them. I concur in this finding, except as regards the third count of the charge, the evidence to which is defective, inasmuch as the property stolen has not been produced in this court. The cause of this is as follows:—The prisoners were originally tried and sentenced by the deputy magistrate, and from his decision an appeal was preferred to this court. It appeared from the record of trial, that the prisoner No. 2, Gungaram Dass, was an old offender, having once before undergone sentence of three (3) years' imprisonment for cattle stealing, and consequently it was beyond the competence of the deputy magistrate to pass sentence. He seemed to be quite aware of this himself, and in his rubookaree of conviction, he remarked that by Construction No. 1273, he did not possess jurisdiction, but nevertheless he passed sentence and made over the stolen property to the prosecutor. The case by the orders of this court was sent to the magistrate, with directions to review the judgment of his subordinate, which was illegal, and the result was the commitment of the four offenders above noted. The stolen property having been made over to the prosecutor, even if recovered could not be satisfactorily identified, and without good proof of identity the prisoner No. 5 could not be convicted of the third count of the charge, and consequently I differ in this respect with the assessors' verdict of the guilt of the prisoners. On the first and second counts, I think there can be no doubt, and I accordingly sentence Gungaram Dass to five (5) years', and the prisoners No. 3, Nurain Dullye, No. 4, Bydee Dullye, and No. 5, Pauchoo Paul, to two (2) years' imprisonment, with labor in irons. Sentence to commence from the date on which it was originally passed by the deputy magistrate."

1852. May 7. Case of Gungaram Dass (appellant) and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"Gungaram Dass has appealed. His confessions before the police and the magistrate have been duly attested by the subscribing witnesses, and are corroborated by the evidence of the prosecutor, and four witnesses, who deposed to their pursuing the thieves and arresting the four prisoners on the high road about a *coss* from the prosecutor's house, and to the prisoner Puchoo pointing out the place where some of the stolen articles were found buried. All the prisoners have been found guilty on the most conclusive evidence; and I see no reason to interfere with any of the sentences. I reject the appeal."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

SHEIKH TORABDEE (No. 2), SHEIKH PULTOO (No. 3), SHEIKH NOKA, ALIAS NUKEE (No. 4), SHEIKH DONAH (No. 5), SUDDARAM GHOSE, ALIAS SUDDOO GHOSE (No. 6 APPELLANT), HURREE GHOSE (No. 7), DIPRAM GHOSE, ALIAS DIP GHOSE (No. 8) AND NILRAM GHOSE (No. 9).

1852. May 7. Case of Suddaram Ghose, *alias* Suddoo Ghose (appellant) and others.

Case of affray, with culpable homicide. A prisoner's appeal, alleging that deceased died a natural death, and that his, petitioner's, witnesses, were not called, dismissed, both allegations being false.

CRIME CHARGED.—1st count, wilful murder of Sheikh Magah; 2nd count, affray, attended with the culpable homicide of Sheikh Magah; 3rd count, accomplices in the crimes charged in the 1st and 2nd counts; 4th count, privity to the crimes charged in the 1st and 2nd counts; and 5th count, aiding and abetting in the crimes charged in the 1st and 2nd counts.

CRIME ESTABLISHED.—Nos. 3, 6 and 7, affray, attended with homicide, and Nos. 2, 4, 5, 8 and 9, aiding and abetting in an affray attended with homicide.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 13th January 1852.

Remarks by the sessions judge.—"From the evidence of three witnesses and the admissions of the prisoners themselves, it appears that a quarrel arose about a crop of rice between Hurree Ghose and Pultoo, an affray occurred, and in it a man named Magah was killed. The witnesses say that after blows had been exchanged, Suddaram Ghose ran away and was pursued and struck; that Suddoo turned round and struck the deceased a blow, from the effects of which he died the next day. These witnesses accompanied Hurree Ghose to the field, but deny that they took part in the affray. Pultoo and his party declared that Hurree Ghose and he attacked them and beat them, and from the effect of a blow Magah's death was caused.

"Hurree Ghose and his party assert that Pultoo attacked them, and that they do not know how Magah was killed.

"They called witnesses to prove they had committed no assault, but they could say nothing in their favor."

Sentence passed by the lower court.—Nos. 2, 4, 5, 8 and 9, three (3) years' imprisonment, without irons, and a fine of rupees twenty (20), or labor, and Nos. 3, 6 and 7, four (4) years' imprisonment, without irons, and a fine of rupees twenty-five (25), or labor.

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Case of SUDDARAM GHOSE *alias* SUDDOO GHOSE (appellant) and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The prisoner Suddaram, *alias* Suddoo Ghose, has appealed, urging that the deceased Magah died a natural death, and that the prisoner's cited witnesses were not called and examined. As regards the first point, Magah appears to have died the day after he received the blow. The witnesses who examined his body depose that the skin of the head gave to the touch on the spot where there was a mark on the head, thus showing that the skull was fractured. Blood was oozing from his nose. Doubtless the deceased met his death from violence.

"The prisoner cited six witnesses, all of whom were called and examined. The appellant's allegations are therefore false. His appeal is rejected."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

NARAIN MUHARNA

versus

MUDHOEE MUHARNA (No. 8) AND LOKENAUTH SINGH (No. 9).

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Case of MUDHOEE MUHARNA and another.

The court observed that both the prisoners might have been convicted on the first charge, and amended the finding of the sessions judge, on the second charge, but confirmed the sentence passed by him.

CRIME CHARGED.—1st count, burglary and theft of property valued at more than rupees 100; 2nd count, accomplices* before and in the commission of the said act; and 3rd count, knowingly receiving stolen property acquired by the above burglary, &c.

CRIME ESTABLISHED.—Accomplices before and in the commission of burglary and theft of property valued at more than rupees 100, and of knowingly receiving stolen property acquired by the above burglary, &c.

Committing Officer, Mr. G. D. Wilkins, officiating magistrate of Cuttack.

* The court, in their letter to the sessions judge, No. 592, of the 30th April 1852, with reference to the second count in the above case, 'accomplices *before* the commission of the act,' directed him to point out to the magistrate that parties can only be accomplices *in* the commission of an offence, and called his attention to Circular Order, No. 8, dated 7th June 1847.

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Case of MUDHOEE MUHARNA and another.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 16th March 1852.

Remarks by the sessions judge.—" It appears that on Sunday night, the 1st of February, the prosecutor's house was broken into, by wrenching from the door the hook to which the padlock by which it was secured was attached, and that cash to the amount of rupees 25, and gold and silver ornaments to the value of about rupees 100, were stolen from a chest, the lock of which was also forced open, of which information was lodged at the thanna the following day. And on Tuesday the prosecutor, having had occasion to get up in the middle of the night and go into his garden, saw Mudhoee Muharna, whose house adjoins his, take something from out of his tank and carry it into his house, and suspecting that he might have committed the theft, he went on the top of his house, and listened to what was going on, and having heard Mudhoee Muharna and his father conversing about the disposal of the property, he, the following morning, gave information of the same to the police, who apprehended the said prisoner and searched his house. And though he at first denied knowing anything about the theft, and nothing was found in his house, he, after being taken to the police *phandy*, said that he and Lokenauth Singh and Bullee Behra committed the theft, and at 11 o'clock at night pointed out the place where he had buried three silver *paors*, and a silver *kunkurroo*, at the foot of a tree adjoining his garden. And on Lokenauth Singh's house being searched the following day, three silver *kumkurroos*, one silver bead, one gold *kuntakullee*, one gold *farseea* and one gold *har*, were found buried in the ground under his bed, and on the top of a wall of his house, and he also confessed, and implicated Mudhoee Muharna and several others; but the rest denied, and nothing was found in their houses.

" The witnesses depose to the occurrence of the robbery, the finding and identity of the property, and the fact of the confessions of the prisoners having been voluntarily made both before the police and the officiating magistrate.

" Before this court the prisoner Mudhoee Muharna made a partial confession; for though he denied committing the robbery, and asserted that the plaintiff, in collusion with the police, threw the property into his *baree* or garden, he stated that Lokenauth Singh committed the theft, and at the time of doing so threatened to kill him if he told anything about it.

" Lokenauth Singh retracted his previous confessions *in toto*, and cited two witnesses to establish an *alibi;* but they both denied being acquainted with him.

" The law officer convicted both the prisoners on the second and third charges, on the grounds of their confessions before the police and the magistrate, and the finding of the property in their possession, and in this conviction I fully concur; for

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though the case appears to have been somewhat slovenly investigated by the police, and all the property found in Lokenauth Singh's house was found and dug up by the prosecutor himself, he, the said Lokenauth Singh, raised no objection on that score; and it is by no means probable that an old offender like him, who has been imprisoned on three different occasions, *viz.*, twice for burglary, and once in default of furnishing security for good behaviour, and has undergone no less than eleven (11) years' imprisonment, would be induced to make a false confession before the magistrate. I, therefore, under the circumstances of the case, sentence Mudhoee Muharna, it being his first conviction, to five (5) years' imprisonment in the zillah jail, and Lokenauth Singh, it being his fourth conviction, to ten (10) years' imprisonment in banishment, both with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed, but on most frivolous grounds. The charge is fully made out by their confessions before the police and the magistrate, (which have been duly proved,) and the finding of the stolen property; and there are no grounds for interfering with the sentence passed by the sessions judge.

"The sessions judge and the magistrate seem to have misunderstood the legal sense of the word accomplice. He can only be an accomplice, who aids in the commission of an offence. The prisoners are, therefore, convicted of being accomplices in the burglary, and *not of being accomplices before its commission.*

"I do not understand why the prisoners were not convicted on the first charge. They confessed to breaking into the prosecutor's house. Burglary is committed not only by those who enter the building, but by those who aid and abet those principally engaged in it, and the prisoner Lokenauth Singh was the principal in this robbery."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

CHUNDERNATH ROY

versus

NUBOO SHEIKH (No. 1), GOVIND BAGDEE (No. 2) AND MUDDOO CHUNG (No. 3).

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Case of NUBOO SHEIKH and others.

In an appeal against a sentence, in a case of dacoity, certain points of suspicion are indicated, but not considered sufficient grounds for a reversal of the sentence.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, on the night of 21st September 1851, or 6th Assin 1258 B. S., and plundering therefrom property valued at Company's rupees 420-15-0; and 2nd count, Nos. 2 and 3, having in their possession a portion of the stolen property knowing the same to have been obtained by robbery by open violence.

CRIME ESTABLISHED.—No. 1, accomplice in dacoity, and Nos. 2 and 3, having in their possession property knowing the same to have been obtained by dacoity.

Committing Officer, Mr. J. R. Muspratt, officiating joint magistrate of Baraset, 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 26th February 1852.

Remarks by the sessions judge.—"The prosecutor deposed that on the 7th Assin last, he was informed by his servant, witness No. 12, Modoosoodun Kotal, that a dacoity had been committed in his house the previous night. On proceeding thither he found from the statement of his other servant, witness No. 1, Premchand Kotal, and personal observation, that his boxes and *pataraks* had been broken open, and property, to the amount of about rupees 400, plundered, consisting of cash, gold and silver ornaments, a list of which he deposited with the darogah. Part of the plundered property was discovered in the possession of prisoners Nos. 2 and 3, which the prosecutor duly recognized. The prisoners denied the charges on which they were arraigned in this court. In the Mofussil and before the magistrate prisoner No. 1, Nuboo Sheikh, admitted his being an accomplice in the dacoity, naming prisoners Govind Bagdee (No. 2,) Muddoo Chung (No. 3) and Neeloo Mundul (No. 4,) as his associates. Witness No. 1, Premchand Kotal, who was a servant of the prosecutor and was sleeping in the verandah on the night of the dacoity, deposed to the fact of fifteen or sixteen persons (of whom he recognized prisoner No. 4, Neeloo, by whom he was wounded) attacking the house, breaking open the boxes and *pataraks*, and plundering property consisting of gold and silver ornaments. Witness No. 13, Madhubchunder Ghosal, a neighbour of the prosecutor, deposed to his hearing the noise of dacoits in the prosecutor's house, and after their departure to his going to the house and observing marks of violence, boxes and *pataraks*

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broken open. Witness No. 14, Mobaruck Mundul, deposed to his seeing Nuboo Sheikh (prisoner No. 1,) on the 10th Assin last, with a bundle under his arm, going into the house of one Nusseer-ooddeen Mundul, to his suspicion being excited and his giving information to the darogah. It was this which led to the arrest of prisoner No. 1, and from his confession the other prisoners were apprehended. Some portions of the plundered property, consisting of gold and silver ornaments, were discovered in the possession of prisoners Govind (No. 2) and Muddoo (No. 3,) which were recognized as the prosecutor's property. Prisoner No. 1, Nuboo Sheikh, had no witnesses, but declared the darogah and witness No. 14, Mobaruck Mundul, had colluded together and accused him unjustly. Prisoner No. 2, Govind Bagdee, declared witness No. 14, Mobaruck Mundul, was a bad character, and cited witnesses to prove his good character. Prisoner No. 3, Muddoo Chung, declared that Mobaruck Mundul, witness No. 14, had thrown the property into his premises, which were quite open; that the witnesses to the finding of the property resided more than one and a half *coss* from his house, and cited witnesses to prove his good character. The witnesses cited supported the plea of the prisoners with regard to their character; but this was not sufficient to set aside the evidence for the prosecution. The jury considered the first count proved against Nuboo Sheikh (prisoner No. 1,) and the second count against Govind Bagdee (No. 2,) and Muddoo Chung (No. 3). I considered prisoner No. 1, Nuboo Sheikh, guilty of being an accomplice in dacoity, and prisoner No. 2, Govind Bagdee, and prisoner No. 3, Muddoo Chung, guilty on the second count, and sentenced them accordingly."

Sentence passed by the lower court.—No. 1, seven (7) years' imprisonment with labor and irons, and Nos. 2 and 3, each three (3) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The primary ground for the apprehension of the prisoners in this case was the deposition of an informer, Mobaruck, who deposed that soon after the dacoity, he saw the prisoner Nuboo going to the house of Nusseerooddeen Mundul, with a bundle, and that he therefore suspected him.

"On the search of Nusseerooddeen's house, some brass utensils, belonging to the prosecutor, were found in his granary. This discovery was not deemed by the magistrate sufficient ground for his committal.

"Nuboo, on arrest, however, confessed, naming Govind, Muddoo and a man, whom the prosecutor's servant stated that he had recognized at the time of the dacoity, Neeloo.

"In Govind's verandah, in a *haree*, a gold *bazoo*, and in the west house of Muddoo, seven items of plundered property were discovered.

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"Govind and Muddoo, who, with Nuboo, now appeal to this court, have denied their guilt at every stage of the inquiry, asserting that the property was surreptitiously introduced into their houses, and that they had been instrumental on a previous occasion in causing the apprehension of the informer, together with Rajoo Byragy, a well-known *sirdar* of dacoits, and a third person, Ruttun; and that these persons had conspired to implicate them falsely by persuading Nuboo to confess against them, and introducing stolen property into their houses.

"The property found at Nusseerooddeen's and Govind's was so in places very easy of access to any one, and in places in which it is not very likely that offenders would keep their share of booty; moreover, it is remarkable that Nuboo only pretended to know the names of three of his fellow dacoits. These are points tending to raise suspicion, but on reference to the joint magistrate, he reports that he cannot discover that the asserted motive for the conspiracy by the informer and Rajoo Byragy against the prisoners exists. I do not, therefore, consider that the suspicion raised by the above facts, in the absence of any ascertained motive, forms a sufficient ground for interfering with the conviction and sentence. The appeal is rejected."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

JEETOO PAUGLAH (No. 1), ROHOMON (No. 2), MODHOO BAGDY (No. 3, APPELLANT,) BASOODEB LUSHKER (No. 4), KAFAIETOOLLAH (No. 5), SHEIKH SULLEEM (No. 6), MOTHOOR DASS (No. 7), CHINTAMONY (No. 8), BISSOONAUTH JOOGY (No. 9), GOBIND CHASA DHOBA (No. 10), HARRANUND GAIN (No. 11), NIMCHAND (No. 12), BHUGWAN LUSHKER (No. 14), MOONSHEE (No. 15), HURRY BAGDY (No. 16), KINNOO DASS (No. 18), KOOBEER SHEIKH (No. 19), SHEIKH AMUND (No. 20), TARRACHAND BAGDY (No. 21), NITTAE BAGDY (No. 22), KALACHAND DASS (No. 23), SHEIKH HUNEEP (No. 24), KALLY MALLA (No. 25), HURRY GHOSE (No. 26), DIGUMBER BAGDY (No. 27), NAWOO SEIN (No. 28), DOORGACHURN PAUL (No. 29), MODHOO COWRAH (No. 30), JYE BAGDY (No. 31), RAMJON SHEIKH (No. 32) AND YARALLY (No. 33)

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Case of MODHOO BAGDY (appellant) and others.

An appeal founded on pleas previously urged by other prisoners in the same case, and then considered unworthy of credit, rejected.

CRIME CHARGED.—Nos. 1 to 3, 1st count, wounding with intent to murder Roop Roy Khuliburdar and Callachand, convicts; 2nd count, while being prisoners under confinement in the Allipore jail, riotously assaulting and wounding Roop Roy and others; and 3rd count, Nos. 1 to 33, accomplices in the above crimes.

CRIME ESTABLISHED.—Nos. 1 and 29, riotous assault and wounding, and Nos. 2 to 12, 14 to 16, 18 to 28, and 30 to 33, accomplices in the riotous assault and wounding.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 24th February 1852.

Remarks by the sessions judge.—"The Government was prosecutor in this case. The prisoners, who are sentenced to different periods of imprisonment in the Allipore Jail, denied the charges on which they were arraigned. Witness No. 1, Roop Roy, Khuliburdar, or superintendent, who is also a convict in the jail, deposed that on the 4th February last, about 1 P. M., all the prisoners attacked him, and beat him on the head, back, hands and feet, until he fell down and became insensible, prisoner No. 1, Jeetoo Pauglah, No. 5, Kafaietoollah, No. 6, Sulleem, No. 3, Modhoo Bagdy, No. 30, Modhoo Cowrah, being mentioned as having *lattees* in their hands, and prisoner

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No. 31, Jye Bagdy, and No. 10, Gobind Chasa Dhoba, seizing him by his cloth and declaring him to have been the cause of the prisoners having rations of the value of three and a half pice. This witness was not able to point out in particular who struck him, but suspected Doorgachurn Paul (No. 29,) Nawoo Sein (No. 28) and Jeetoo (No. 1.) It appears that the witness for his good conduct was appointed as a superintendent over the other prisoners, and had been useful to the jailor in introducing the messing system in the jail, and had, consequently, incurred the dislike of the prisoners, who combined together to punish him in the way described. The statement of the witness was corroborated by the evidence of the other witnesses. All the prisoners being proved to have been concerned in the riot, Jeetoo (No. 1,) and Doorgachurn (No. 29,) Modhoo Bagdy (No. 3,) and Rohomon (No. 2,) being more conspicuous in their riotous conduct. From the evidence of Dr. Strong, it appeared that Roop Roy, witness No. 1, 'had a considerable lacerated wound on the top 'of the head, and Callachand, witness No. 2, a slight bruise on 'the right shoulder-blade.' Neither of these wounds was considered of a dangerous character. All the prisoners pleaded their innocence, some complaining against Roop Roy for his oppressive conduct, others citing witnesses to prove they were sitting at their work at the time of the riot. Some of the witnesses who were fellow prisoners supported them in their statement to this effect. The jury did not consider the first count proved. They considered the second count proved against Jeetoo (No. 1,) Rohomon, (No. 2,) Sulleem (No. 6) and Doorgachurn (No. 29,) and the third count against all the prisoners. I concurred with the jury on the first count not being proved. I considered the second count proved against Jeetoo (No. 1) and Doorgachurn (No. 29,) and the third count against all the prisoners, Modhoo Bagdy (No. 3) and Rohomon (No. 2,) being more actively concerned, and sentenced them to different grades of punishment."

Sentence passed by the lower court.—Nos. 1, 2, 3 and 29, each seven (7) years' imprisonment, and Nos. 4 to 12, 14 to 16, 18 to 28 and 30 to 33, each seven (7) years' imprisonment, all with labor and irons, in addition to their former sentences.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"Another prisoner, Modhoo Bagdy, has now appealed, urging the same plea as the preceding appellants. For the reasons recorded in my note of April 21st, I do not consider it worthy of attention or founded on probabilities. The appeal is rejected."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

MAHOMED UKBUR (No. 2), DURVEISH KHAN (No. 3), JEETUN (No. 4) AND ZAHEER (No. 5).

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The prisoners charged with wilful murder, were convicted by the sessions judge of being accomplices in culpable homicide. The court held, that the circumstances of the case, as set forth in the record, brought it within the class of wilful murder; but in consequence of the grave confliction in the statements of the principal witnesses before the police as compared with their depositions in the foujdaree and sessions court, acquitted the prisoners, and ordered their immediate release.

CRIME CHARGED.—Wilful murder of Burkutoollah, on the 25th June 1851.

CRIME ESTABLISHED.—Accomplices in culpable homicide.

Committing Officer, Mr. H. C. Halkett, magistrate of Backergunge.

Tried before Mr. W. J. H. Money, sessions judge of Backergunge, on the 26th December 1851.

Remarks by the sessions judge.—" The Government was prosecutor in this case. The prisoners denied the charges on which they were arraigned in this court, in the Mofussil and before the magistrate. It would appear that witness No. 13, Musst. Foolshun, discovered some money in the vacated premises of witness No. 17, Aladee, part of which the deceased Burkutoollah snatched away from her; that on the witness mentioning this circumstance to her son, witness No. 2, Ukburoollah, and desiring him to complain to the prisoner No. 2, Mahomed Ukbur (a person of some notoriety and influence in his neighbourhood), this prisoner sent for the deceased Burkutoollah to his *cutcherry*, at the house of the prisoner No. 3, Durveish, where witness No. 1, Ushruff Sheekdar, saw him about two *ghurries* of the end of the day on the 10th or 11th of Assar last. This witness deposed to the fact of the prisoner No. 2, Mahomed Ukbur, informing him of the money which the deceased had found, and which he was anxious to obtain through his interference, to the deceased denying having found any money; upon which prisoner No. 3, Durveish, No. 4, Jeetun and No. 5, Zuheer, seized and pressed down the head of the deceased, and prisoner No. 2, Mahomed Ukbur, began to burn his left foot with a lighted torch, a servant of the prisoner, called Gurreeboollah, burning the sole of the deceased's foot with another torch; to the deceased shouting out and admitting having found some money, which he had concealed in his house, and to the prisoners proceeding there and taking it; and from the information they had from the deceased, to their going to the house of the mother of witness No. 2, and obtaining also some money from her. This witness further deposed that the deceased was detained two days in the house of prisoner No. 3, and then removed to another *cutcherry* of prisoner No. 2, to the house of one Jahangeer, where attempts were being made to administer relief to

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the foot of the deceased; that on the witness's remonstrating he was sent by the prisoner No. 2 to give information to the wife of the deceased, and at her request he gave his deposition to the darogah, who sent with him two burkundauzes for the purpose of releasing the deceased; that the prisoner No. 2 and prisoner No. 3, and two other persons, gave a bribe to the burkundauzes to induce them to give a favorable report to the darogah, to the purport of having found the deceased in an empty house; that the deceased was sent to the sudder station, where this witness understands he died from his ill-treatment. This witness, and the deceased, and the mother of witness Ukburoollah, are all the *ryots* of the same person, and prisoners Nos. 2 and 3, are the gomashtas of the eight anna share of that property. Witness No. 2, Ukburoollah, the son of witness No. 13, who found the money which originated the case under remark, confirmed the statement of the previous witness as to the ill-treatment the deceased received—prisoners No. 3, Durveish, No. 4, Jeetun and No. 5, Zuheer, holding him, and prisoner No. 2, Mahomed Ukbur, burning his left foot with a lighted torch; this witness being made to accompany the prisoners to the house of the deceased for the money which he acknowledged being concealed there, he (witness,) being himself ill-treated as well as his mother, who, out of fright, gave up the money she had deposited in her premises. This witness further deposed that he and his mother were detained by prisoner No. 2, at his *cutcherry* at Jeelbunneeah, and made, under threats, to inform the darogah that an alligator had wounded the deceased; that he managed to abscond to Burrisaul, where he gave a petition requesting his mother's release from confinement. The previous evidence was confirmed by witness No. 3, Sheikh Kullim and witness No. 4, Abid, who had been sent by the wife of deceased to the house of prisoner No. 3, to see what had become of him. They both deposed to the fact of prisoner No. 2, Mahomed Ukbur, burning the deceased's left foot, and prisoners Nos. 3, 4 and 5, assisting in holding him down. Witness No. 5, Gyasdee, witness No. 6, Gureeboollah and witness No. 7, Kishen Ram Seel, were all eye-witnesses of the ill-treatment received by the deceased in the manner above described. Witness No. 13, Musst. Foolshun, mother of witness No. 2, Ukburoollah, deposed to her finding some money in the vacated premises of witness No. 17, part of which deceased took away from her; to her mentioning it to her son, who, at her request, complained to the prisoner No. 2; to the subsequent ill-treatment of the deceased for the sake of this money; to her being also ill-treated, as well as her son, and being taken to the *cutcherry* of prisoner No. 2, where she saw the left foot of the deceased had been burnt. Witness No. 14, Musst. Hoonee, wife of the deceased, deposed to her having

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sent witness No. 3, Sheikh Kullim and witness No. 4, Abid, as described, to see what had become of her husband, who was being ill-treated by the prisoners, who came to her house in search of the money her husband had deposited there. Her husband was released from the house of one Jahangeer in consequence of a petition given to the thanna by witness No. 1, Ushruff Sheekdar. Her husband was about fifty years old, in good health, and there was no ill-will with the prisoners. Witness No. 15, Kooshye, deposed to his seeing the deceased at the house of prisoner No. 3, about 4 *ghurries* of the latter end of the 10th or 11th of Assar, and to his requesting him (witness) to go to his wife and beg her to send the money, he (deceased) had found, or he would be ill-treated. Witness No. 16 deposed to his seeing the deceased in the house of prisoner No. 3, with his left foot burnt. Witness No. 17, Aladee, deposed to his being obliged to abscond from the oppression of prisoner No. 2, Mahomed Ukbur, who plundered and burnt down his house, and to the fact of his hearing from his father that about rupees 300, were concealed in the house. Witness No. 19, Becharam Dey, witness No. 21, Ainoollah and witness No. 22, Sullim Sheekdar, deposed to their having seen the deceased in the house of prisoner No. 3, with his left foot burnt. Witness No. 20, Fuqeer Mahomed, was the boatman, and accompanied the burkundauz to release the deceased, whose left foot was bandaged. The witnesses to the *sooruthal* deposed to a wound on the left foot of the deceased (then alive but much distressed) from the toes to the instep, about eight fingers long, seven fingers broad, skin and flesh dried up; a wound on the sole of the foot three fingers long, three fingers broad, half a finger deep, as if caused by burning.

"The uncovenanted assistant surgeon deposed that 'there 'had been mortification of the instep of the deceased, which 'might have been the result of some malignant ulcer, or caused 'by the application of fire, or of any concentrated heat, whether 'of steam or hot water. As the only means of saving life, he 'amputated the limb below the knee, but the deceased died of 'lock-jaw thirty hours after the amputation. He was suffering 'from lock-jaw when he came to the hospital, which was pro- 'duced by irritation of the nerves, the bones of the whole instep 'and the toes being exposed. There were no other symptoms 'of disease which could have occasioned his death.'

"Prisoner No. 2 cited witnesses to prove enmity with the darogah who conducted the primary investigation, and with the zemindars under whose influence the darogah acted.

"Prisoner No. 3 cited witnesses to prove his innocence. Prisoner No. 4 cited witnesses to prove an *alibi*, and that the

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deceased was wounded by an alligator. Prisoner No. 5 cited witnesses to the same purport, but their pleas were not at all satisfactorily supported.

"In consequence of the prisoner's insisting that the deceased had been wounded by an alligator, the uncovenanted assistant surgeon was again examined as to whether the stroke of an alligator, either with his foot or tail, could cause such a wound as to render the application of a heated iron necessary for its cure. He could not give a direct answer on that point, though he had heard alligators could inflict some injuries with their tail and feet. There were no marks, however, on the foot of the deceased when he came to the hospital, as if from the stroke of an alligator's tail or foot. The deposition of the deceased on the 6th July, before the darogah, as to the ill-treatment he had received, the consistent evidence for the prosecution and the strange fact of *Ukburoollah* and his mother being brought to the darogah in the Mofussil by prisoner No. 3, Durveish Khan, all show that the story of the alligator was purposely fabricated by *prisoner No.* 2, and support the statement of *Ukburoollah and his mother* being detained in confinement, as detailed in evidence in this court. I concurred, therefore, with the jury in considering the prisoners guilty of being accomplices in culpable homicide, and sentenced them accordingly."

Sentence passed by the lower court.—No. 2, five (5) years' imprisonment with labor in irons, and Nos. 3, 4 and 5, each four (4) years' imprisonment without irons, and a fine of rupees one hundred (100) or labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"If I held the evidence in this case to be trustworthy, I should consider that the prisoners have been guilty of a deliberate murder, but I can place no reliance on the prosecution.

"The deceased is said to have been seized by the prisoners Nos. 3, 4 and 5, and carried off on the 25th June 1851, to the house of the prisoner No. 2, where he was burned and tortured, in order to make him divulge where he had deposited some money which he had found, to such an extent that he died, as is alleged, of the injuries he then received. The medical officer deposes that the deceased when he was brought into the station hospital, on the 7th July, had locked-jaw, owing to the irritation of the nerves; the deceased's limb was amputated in the hope of saving him, but he died of tetanus, thirty hours after the operation. The injury is ascribed to a malignant ulcer, or it may have been caused by the application of fire to the limb. It appears from the papers that from the 25th June to the 6th July, neither the prosecutor, nor his wife, nor brother, gave information at the police. On the 4th July, however, one Ushruff did give

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information at the thanna of the treatment deceased had met with. On the 6th, the deceased's deposition was taken by the police, when he charged all the prisoners with the act. On the 13th July, Foolshun, the mother of Burkutoollah, who is now said to have found the money, deceased's brother, Durveish, Gyasooddeen, Gurreeboollah and Kishen Ram, all were examined by the police, and all said they knew nothing of any treasure having been found, neither did they of the assault, but they had heard that deceased had been torn by an alligator as he was crossing a nullah called Chotoo Mokamee. Subsequently before the magistrate on the 30th and 31st July, they all swore to every particular of the assault by the prisoners, describing most minutely the part which each took. Ukburoollah, Foolshun's son, was examined on the 12th August by the magistrate. *He* had been confined as well as the deceased by prisoner No. 2, but had made his escape, and on the 9th August in a petition stated that he too had seen the assault committed on the deceased. Two other witnesses, Abid and Kulleem, have also deposed to witnessing the ill-treatment the deceased met with, when they were sent by Musst. Kooree, the wife of the deceased, to ascertain what had become of him.

"The prisoners Nos. 2, 4 and 5, as usual, plead *alibi*, and state that deceased was bitten by an alligator. Prisoner No. 3, made the same defence, and says he is at enmity with the opposite party. Numerous witnesses have been examined for the defence; they of course confirm the pleas they are brought forward to establish. I do not, however, place any reliance on their evidence. I look more to that which has been adduced on the part of the prosecution; it is so conflicting in itself, and would prove that which is so highly improbable, that it must not be believed. Here is a man burned and tortured on the 25th June, who does not make any complaint till the 6th July. He may not have had an opportunity of doing so, but where were his wife, his brother, and Ukburoollah, Gyasoodeen and Gurreeboollah, who had been in confinement at the same time as the deceased? They were at large, as was Ushruffoollah, the informant at the thanna, on the 4th July. How is it that on taking the statements of Ushruffoollah on the 4th July and the deposition of the deceased on the 6th idem, accusing the prisoners, the police did not examine the above witnesses at once, but delay till the 13th idem, and then receive and record their statements, so directly in contradiction of the story told by the deceased and the informant. The parties alluded to may have been tampered with, but I cannot convict on evidence and on statements so conflicting; the offence with which the prisoners stand charged, if death ensued, can amount to nothing less than murder; the burning and torturing alleged to have accompanied the assault

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on the deceased, was deliberate, and gives it a most serious complexion. The evidence, however, of the medical officer is not explicit as to the cause of death.

"I am not satisfied with the evidence for the prosecution, and, therefore, though that for the defence is equally unsatisfactory, I deem it the safer course to acquit the prisoners."

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

THAKO CHUNDER CHUND

versus

GOOIA GHOSE, ALIAS GOBURDHUN GHOSE (No. 1) AND MODHOO GHOSE (No. 2).

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Case of GOOIA GHOSE, *alias* GOBURDHUN GHOSE and another.

Sentence of seven years' imprisonment for culpable homicide upheld.

CRIME CHARGED.—Charge first, 1st count, committing a highway-robbery on Dhonai Sheikh Gariwan, witness No. 1, and thereby plundering from him property to the value of rupees 114-11-0; 2nd count, accomplices in the same; and 3rd count, No. 1, receiving and keeping a part of the property, knowing it to have been acquired by the above highway-robbery.

CRIME ESTABLISHED.—No. 1, privity to highway-robbery, and No. 2, highway-robbery in company with others.

Committing officer, Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. E. Bentall, additional sessions judge of Nuddea, on the 3rd March 1852.

Remarks by the additional sessions judge.—"Two men, witnesses Nos. 1 and 2, were passing in a plain near the village of Gobberkolee, in the thanna of Hurra, on the evening of the 10th of November last with a cart, on which was some cloth and thread, which had that day been bought at Santipore. They were attacked and robbed by a party of men, and notice of the circumstance was that day given to the police. It appears by the record, that on the 13th of November the darogah heard from a boy, who did not know the nature of an oath, that a party of men from Mohutpore, a village about five miles off, among whom were the prisoners, had been in that neighbourhood, and remained after the boy had left. The prisoner No. 1 appears to have been apprehended on the 16th November at Rogoonathpore in the thanna of Ogurdeep, and to have been taken to the darogah of Hurra, before whom he showed where a quantity of the stolen property was hid in some grass in a plain about 15 or 16 *russees* from his village. He said that one Dadhoo had put it there. The marks on the cloth, &c., were identified by the man who had sold them, and they corresponded with those in

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his shop book. The manner in which the property was recovered throws strong suspicion against the prisoner that he was accessary to the hiding of it, and the confession of the prisoner Modhoo, in which it is stated that Goburdhun was one of the robbers, increases it, but still this is not legal evidence; and the prisoner, both before he showed where the property was and afterwards, denied that he took any active part in the crime. He allowed that he was with the robbers before the crime was committed; that he saw a cart, but did not see the robbery committed; and that he was told where some of the stolen property was hid. The two men who were with the cart say that they recognized the prisoners; but I do not place any confidence in their depositions, as there is nothing to support them, and they did not say so until the prisoners had confessed, and it may have been that Goburdhun was not present, but otherwise engaged at the time of the robbery. It cannot be supposed, however, that he did not intend to have a share of the spoil owing to his keeping secret his knowledge of the crime; and his privity is therefore highly culpable. The prisoner Modhoo Ghose confessed his crime both before the police and before the magistrate, and said he was one of the robbers and is convicted on his confessions."

Sentence passed by the lower court.—No. 1, five (5) years' imprisonment with labor and irons, and No. 2, seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed by the sessions judge on the prisoners Goburdhun Ghose and Modhoo Ghose."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

MUSST. NEWLEE

versus

SOOMRUN DOSS.

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Case of SOOMRUN DOSS.

The court considered the sentence passed by the sessions judge upon the prisoner, convicted of culpable homicide, in causing the death of the deceased by maltreatment, to be lenient under the circumstances of the case.

CRIME CHARGED.—Wilful murder of Domun Koiree, the husband of the prosecutrix.

CRIME ESTABLISHED.—Culpable homicide of Domun Koiree.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 12th January 1852.

Remarks by the sessions judge.—"The facts of this case, as established by the distinct and consistent evidence of eight eye-witnesses, are these:—

"On the 15th December 1851, the prisoner, with another man not before the court, seized the deceased and dragged him from a granary where he was, to the prisoner's house, beating and otherwise maltreating him the whole way. When they reached the prisoner's house he was then locked up; but subsequently, on security being offered, he was released and conducted in a state of extreme weakness and exhaustion to his own house, where he was laid on a *charpaee.* He died on the 18th, having remained during the interval in a state of suffering and prostration.

"The ostensible cause of this violence was the default of the deceased, who is a cultivator on an estate held in farm by Mr. Solano, an indigo planter.

"The prisoner is Mr. Solano's servant.

"The real cause is said, and with some reason, to be the ill-will entertained by the prisoner against the deceased, in consequence of the latter having, a short time previous, given evidence against him in a case of assault, in which the prisoner was fined.

"Rent was due from the deceased, but he disputed the amount demanded.

"The evidence of the medical officer shows that the breast-bone of the deceased was forced inwards, and partially dislocated, and that death was caused by the injury sustained.

"The prisoner says in his defence that other servants of Mr. Solano beat the deceased, but he was standing some yards off.

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"He adduced four witnesses; but their evidence failed to substantiate the plea.

"The *futwa* acquits of wilful murder; but convicts of culpable homicide.

"There is no reason to believe that there was any other intention than to inflict a severe thrashing on the deceased; but looking at the fact that previous cause of ill-will existed, and at the deliberate and prolonged cruelty of the assault, I sentence the prisoner to seven (7) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"This is a case of brutal ill-treatment, by beating, kicking and trampling on the deceased, which forced inwards his breast-bone, partially dislocating it. The cause assigned at the trial for the ill-treatment was, that the deceased was in arrear of rent; but the real cause seems to have been that the deceased had on a former occasion given evidence against the prisoner Soomrun; the deceased died about four days after of the injuries he received. The sessions judge has rightly convicted the prisoner Soomrun of culpable homicide, and I see no reason to interfere with his sentence of seven (7) years' imprisonment, though it appears a lenient one. It appears to me that the sessions judge's statement, that the prisoner only intended to inflict a severe thrashing is inconsistent with the fact that the deceased's breast-bone was driven in and dislocated. The intention must have been to inflict very serious bodily injury, making the crime amount very nearly to murder."

PRESENT:

J. R. COLVIN, Esq., *Judge*.

PANCHCOUREE

versus

JEEAH LAUL.

1852.

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Case of JEEAH LAUL.

Conviction of burglary cancelled, as, though there may often be cases in which the finding a party with stolen property in his possession, near the scene, or close after the occurrence, of a burglary, affords a reasonable ground of conviction that such party was concerned in the burglary, yet the conviction would not be good upon *no other* evidence than that property was found concealed in the house of the prisoner after a lapse *of seven days*.

Conviction of knowingly having in possession an inconsiderable part (of about six rupees value) of the property carried off in the burglary, upheld, but sentence reduced to imprisonment for two (2) years, with labor and irons, with a fine of rupees thirty (30), payable to the prosecutor under Section I. Act XVI. of 1850.

CRIME CHARGED.—1st count, burglary and theft of property valued at Company's rupees 412-2-0; and 2nd count, retaining in his possession stolen property knowing it to have been obtained by burglary and theft.

Committiug Officer, Mr. A. E. Russell, officiating magistrate of Purneah.

Tried before Mr. F. Lowth, officiating sessions judge of Purneah, on the 23rd February 1852.

Remarks by the sessions judge.—" The prisoner pleaded 'not guilty.'

" It appears the prosecutor, on the night in question, 27th October 1851, or 11th Kartick 1258 B. S., was sleeping in the eastern verandah of his house, and knew nothing of the robbery till morning, when his wife, who had slept inside the house, called out to him that a burglary had been committed. He then went inside the room and found an entrance had been effected through the wall at the south-west corner, a chest broken open, and therefrom a small basket containing jewels, a small box in which were deposited rupees 105 in cash, together with three bundles of clothes and other property, amounting in value altogether to rupees 412-2-0, stolen. Information was duly given to the police, and the necessary investigation made, resulting in the recovery of some of the property, amounting to about rupees six or more in value, from the house and premises of the prisoner. It appears that the prosecutor's suspicions at first rested on the chowkeedar of the village, in consequence of an old ragged piece of cloth, somewhat similar to what he had been seen to wear, being found near the chest. His house was accordingly searched by the police, but nothing was found in his house, being in fact an open shed, and no other proof was forthcoming against him. Search was then made in the neighbourhood of the village, and the small box, said to have contained the money, broken and empty, with other articles, found, which the prosecutor at once identified as his property. The prosecutor then requested the

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darogah to search the house of one Jankee Kurureeah, residing in the village Koolabadlah, in the direction of which the above articles had been discovered; but again failed to obtain any traces of his lost property. He then declared his inability to point out any party as the thief; but that he would inform the darogah in a day or two should he obtain any clue to the matter. Accordingly, two days afterwards, he met a friend, to whom he related his loss, and who suggested the propriety of searching the prisoner's house, as he was a *budmash*. The prosecutor immediately notified his suspicions against the prisoner, and had his house searched, when the property, Nos. 1 to 11, produced in court, was found.

"The facts of the prosecutor's house having been burglariously entered, his chest broken open, and property stolen therefrom, were duly established by the evidence of witnesses, neighbours of the prosecutor, whilst others bore full testimony to the recovery of the property produced in court from the prisoner's house and premises. These articles were duly identified by other parties as belonging to the prosecutor. The prisoner in his defence declared the property found to be his own, and that the jewels had been buried by his mother in the place where they were discovered (*viz.*, under a tattie round the courtyard of the house) before he was born, consequently some twenty-two years ago, and cited several witnesses to prove his statement. Of these the prisoner refused to examine four witnesses, a fifth was not forthcoming, and the remaining five declared their ignorance of the matters they were called on to depose to.

"The jury returned a verdict of 'guilty' against the prisoner on both counts. Considering the property was recovered from the prisoner's house and premises, and was duly identified by the prosecutor, whilst the prisoner utterly failed to establish his pleas, I fully concurred in the above verdict and sentenced the prisoner accordingly."

Sentence passed by the lower court.—Five (5) years' imprisonment with labor and irons, and a fine of rupees four hundred (400), under section I. Act XVI. of 1850, as compensation for the loss sustained by the prosecutor

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—" This case has been the subject of correspondence*

* *Extract from a letter No. 398, dated 27th March 1852, from the Register of the Nizamut Adawlut to the Officiating Sessions Judge of Purneah.*

"The Court request that you will submit for their inspection in original the proceedings connected with the commitment and trial of Jeeah Laul, No 1, of Statement No. 6, and in doing so, explain upon what evidence you consider the actual perpetration of the burglary and theft charged, proved against the prisoner. Your remarks on the case point only to the finding a small portion of the plundered property in the prisoner's possession."

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with the sessions judge as to the legal grounds of conviction on the charge of burglary, as well as of knowing receipt of stolen goods, and the prisoner has also appealed on the facts. His appeal, however, consists of nothing beyond a vague and unsupported statement of enmity on the part of the prosecutor and his witnesses; and I see no ground to disturb the conviction on the second count.

"The reasons assigned by the sessions judge for his conviction on the first count, of the actual perpetration of the burglary, are not sufficient. No doubt, there are often cases in which the finding a party with stolen property in his possession, near the scene, or close after the occurrence, of a burglary, affords a reasonable ground of conviction that such party was concerned in

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Extract from a letter, No. 29, dated 6th April 1852, from the Sessions Judge of Purneah to the Register of the Nizamut Adawlut.

"In reply to your letter, No. 398, of the 27th ultimo, I beg to transmit, in original, the proceedings connected with the trial of the prisoner Jeeah Laul, No. 1, of Statement No. 6, for the month of February last, and to submit the following remarks as required by the court relative to the proof against the prisoner of the actual perpetration of the burglary and theft charged.

"Though on the trial no evidence as to the prisoner being *seen* in the act of committing the burglary and theft was adduced, yet the depositions of the witnesses noted in the margin, clearly showed the prosecutor's house to have been burglariously entered and property stolen therefrom on the night in question, whilst the finding of the property concealed in the prisoner's premises, and its identification as belonging to the prosecutor, were equally proved by other witnesses, Nos. 4, 5, 6, 7, and 8, 9, 10 and 11. The presumption therefore was strong that the prisoner had committed the crime charged against him, and so obtained possession of the property; and as he utterly failed to substantiate the pleas advanced in his defence, I concurred in the verdict of the jury, and sentenced him for the higher offence charged. It appears to me that when the perpetration of a crime of this nature has been clearly established by evidence, though the actual perpetrator may not have been known at the time, and a portion of the stolen property has been discovered concealed in a party's premises, and when called on to account for its being so concealed, such party is unable to adduce any satisfactory reasons, or produce any evidence in support of the pleas set forth in his defence, the only fair conclusion to be drawn is, that he obtained such property by committing the offence charged. The prisoner in this case pleaded that his mother had buried the jewels, found concealed under a *machan* near the tattie wall surrounding a part of his house, some 22 years ago, but signally failed to establish the point by the evidence of his witnesses. It was, moreover, so improbable a story that he should have allowed the jewels to remain buried for so many years in such a position that not the smallest credit could be given to it. The conviction and sentence of the prisoner on the second count of having in his possession stolen property, knowing the same to have been obtained by burglary and theft, might perhaps have been more correct; but under the circumstances above detailed, I considered the offence charged in the first count sufficiently established to warrant his conviction thereon, and awarded punishment accordingly."

Murchye No. 1.
Kuppoor " 2.
Boodhee " 3.

the burglary; but, in this instance, the property was found concealed in the house of the prisoner after a lapse of seven days.

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"The sentence, upon all the facts, and with reference to the very inconsiderable value (about rupees 6) of the property found in the prisoner's possession, is, in my judgment, decidedly too severe. I reduce it to imprisonment for two (2) years' with labor and irons from the date of the sentence by the sessions judge, with a fine of rupees thirty (30), payable to the prosecutor under Section I. Act XVI. of 1850."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

RAMDOSS BUGGUT

versus

DUMBER MISSER.

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Case of DUMBER MISSER.

The prisoner convicted of murder, was sentenced to imprisonment for life, in the Allipore Jail, with labor and irons, at the discretion of the medical officer, instead of to death, because he was proved to be subject to fits of insanity, although not under the influence of one at the time of the commission of the act.

CRIME CHARGED.—Wilful murder of Rampurtab, the brother of the prosecutor.

Committing Officer, Captain T. Simpson, principal assistant agent Governor General at Hazareebaugh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebaugh, on the 27th April 1852.

Remarks by the deputy commissioner.—"The prosecutor states that on the 9th Assin (3rd October) last, his brother, Rampurtab, was murdered by the prisoner Dumber Misser. The prosecutor was then absent from his home, and on returning next day was informed of the murder and sent information to the police. The prisoner and the deceased have had disputes about their fields. Three years ago they had a quarrel, and had not the villagers interfered, the prisoner would then have killed him. The prisoner was never insane, and witness never saw him use intoxicating things.

"The prisoner pleads 'not guilty.'

"No. 1, witness Musst. Kosoom, states that on the 9th day of the moon, at the time of the *Dussera* festival, about midnight, her husband Rampurtab being at shrine of Debee, cried out 'he is killing me,' and on hearing this, she and her husband's brother's wife, Musst. Ajnos, went to the shrine, which was only a few paces distant, and saw the prisoner striking deceased with the half-burnt stick and sword, which are now in court; whereupon they raised a hue and cry and the prisoner then fled. On hearing the outcry, Bissoon Putwa and others came and apprehended the prisoner. Witness and Ajnos carried the deceased home, and Bissoon and others gave the prisoner in charge to his brother. The deceased was wounded on the head

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with the half-burnt stick and with a sword. He lingered till the following midnight when he died. He never spoke. Of his wounds the sword-cut was the most severe. Witness saw the prisoner strike deceased with the sword. He had also the half-burnt stick in his hand. First he struck the deceased with the stick, and then laid it down and struck with the sword. This occurred within the shrine, which is open on all sides. The night was dark. Prisoner and deceased have had disputes about cattle trespass. The wound was made with the point of the sword.

"No. 2, witness Ajnassee, corroborates the foregoing evidence in all particulars.

"No. 3, witness Joeram Putwa.
,, 4, ,, Santoke Putwa.
,, 5, ,, Balluk Putwa.
,, 6, ,, Bissoon Putwa.
} These witnesses state that at midnight, on the 9th Assin, they heard the women raise a hue and cry that the prisoner Dumber Misser was killing Rampurtab. They came and apprehended the prisoner with a lighted stick and a sword in his hands, within a few paces of the spot where the murder was committed. The prisoner was then, and has always been perfectly sane. He said nothing when apprehended. These witnesses also prove the record of the inquest.

"No. 8, witness Motee Putwa.
,, 9, ,, Bodha Putwa.
} Prove the confession of the prisoner before the police officer.

"This confession is to the effect, that the prisoner went out yesterday night with a lighted stick to drive off witches and demons; that there were several men, he does not know who; and that he, being intoxicated with eating hemp, struck with a burning stick. He had a sword in his hand but did not use it. The reason of this act was that it came into his mind. He had no quarrel with deceased and killed him unintentionally.

"No. 12, witness Doorga Jeswar.
,, 13, ,, Tillukdhary Singh.
} These witnesses state nothing material.

"No. 15, witness Doorga Kahar.—Last year in Bysakh, (April) the prisoner Dumber Misser was mad. He picked up filth and straws and said it was an idol and he would worship it. Witness saw this on two days and then went to Singhbhoom. Witness saw the prisoner three or four days before the murder; he was then sane. Witness only once saw the prisoner mad, though he said before the principal assistant that the prisoner was sometimes mad and sometimes sane. The truth is that witness only once saw the prisoner mad.

"The prisoner in his defence says that he has not killed Rampurtab; that for three days in Bysakh last year his mind was astray, but at all other times he has been sane. The fact is that he used to get handfulls of rice from the merchants, but

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that is over now, and these Putwas* are dissatisfied with him, because he will not serve them or cut silk. This is his defence.

No. 17, witness Kunchun Misser, is the prisoner's brother. Witness was at the Debee shrine, and prisoner was in his house. Witness knows nothing in defence of the prisoner.

"No. 18, Hurdial. } Know nothing respecting the prisoner.
,, 19, Dursoo. }

"The jury, whose names and occupations are entered below,† find that the prisoner committed the act, but they consider that he was not then responsible for his actions, and that on this ground he should be discharged.

"In the magistrate's proceedings it will be seen that the medical officer (Dr. Collum,) under whose charge the prisoner has been for some time, has given an opinion, on oath, that he considers the prisoner subject to fits of insanity. This officer having since left India, he could not be examined before this court. It is to be regretted that the grounds of this opinion have not been stated, and the more so, because the evidence for the prosecution, excepting that of Doorga Kahar, on which little reliance can be placed, is adverse to such a conclusion. The facility with which a defence of this kind may be set up, and the frequency of its occurrence, demand the utmost caution in regard to it. There is not in this case any proof that the prisoner committed this murder during a fit of insanity. Neither has any such fit occurred since, and I cannot understand how, in the absence of evidence, the prior occurrence of such fits can be predicated. The jury have gone on the absence of proof of sanity, which is an inverted and unsound way of reasoning. A man must be held sane until he be proved to be insane. The conduct of the prisoner before this court was that of a sane man. His defence, however, is incoherent, and he is in a state of extreme debility from long continued illness. Though I consider that the proof of previous ill-will between the prisoner and the deceased, is sufficient, and consequently find him guilty of wilful murder, yet, in the face of doubts raised by the medical evidence, I do not think that an extreme sentence should be passed, and I therefore recommend that the prisoner be sentenced to imprisonment for life, with hard labor in irons and in transportation beyond sea."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"It is quite clear that the prisoner killed the deceased, but I do not think that the previous ill-will, which is stated to have existed between them, is sufficient to account for the

* Alluding to the witnesses, many of whom are Putwas.

† Lalla Bechoo Lall, *mookhtar*, Lalla Moharaj Singh, *mookhtar*, Lalla Gopaul Lall, *mookhtar*.

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commission of the act. The witnesses state that the prisoner and deceased had disputes about their fields, and three years ago they had a quarrel, but there is no proof of any disagreement immediately preceding the occurrence, so as to induce a presumption that the prisoner killed the deceased from motives of enmity. Though the evidence does not prove that the prisoner was at the time in an insane state of mind, which would, under Section I. Act IV. of 1849, alone warrant an acquittal, yet there is no doubt that he is liable to fits of insanity. The medical officer, in his deposition of the 14th of October, states that 'his intellects are affected, and he is not of sane mind.' In his letter of the 14th of January he remarks as follows: 'He has since conducted himself in a satisfactory manner, and 'has evinced no symptons of insanity. His appearance, how-'ever, indicates insanity, and I consider him liable to attacks 'of insanity,' and from his state, when he first came under observation, he was of opinion that he may have been so affected when he commited the crime. On the 22nd of March the medical officer further stated on oath, as follows: 'He (the pri-'soner) is now quite sensible. I believe him to be subject to 'fits of insanity, and at such times he is not a responsible subject.'

"The conduct too of the prisoner in attacking the deceased, with a lighted stick in one hand and a sword in the other, is coherent with his statement, that he went out with a lighted stick to drive away the witches and demons, and strengthens the suspicion that his mind was deranged. Under the above circumstances, I am of opinion that the extreme penalty of the law should be remitted, and, in concurrence with the deputy commissioner, I sentence him to imprisonment for life, but in the Allipore jail, with labor and in irons, at the discretion of the medical officer of the jail."

PRESENT:

W. B. JACKSON, Esq., *Judge*.

GUNGADHUR DEY

versus

SULIM SHEIKH, ALIAS KOMORUDEE SHEIKH (No. 1), ADAM SHEIKH (No. 2), HANIF MUNDUL (No. 3), FUQEER MAHOMED SHEIKH (No. 4), ARADHUN SHEIKH (No. 6) AND KUREEM MOLLA SHEIKH (No. 7).

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Case of SULIM SHEIKH *alias* KOMORUDEE SHEIKH.

Sentence of fourteen years, for dacoity, and seven years for privity to it, upheld. A confession before the police admitted as good evidence with reference to the careful and satisfactory nature of the proceedings of the police authorities throughout the case.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, in which property to the value of rupees 21-10-6 was plundered; and 2nd count, accomplices in the above dacoity.

CRIME ESTABLISHED.—Nos. 1, 2, 4 and 6 dacoity, No. 3, accomplice in committing a dacoity, and No. 7 privity to dacoity.

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddeah.

Tried before Mr. E. Bentall, additional sessions judge of Nuddeah, on the 1st March 1852.

Remarks by the additional sessions judge.—"This dacoity took place at the house of the prosecutor in the village of Muktadah, in the thanna of Dewangunge. The loss which is said to have been sustained is about rupees 21. The prisoner Sulim was secured on the spot by the villagers; and the next day information of the circumstance was carried by the chowkeedar to the thanna, the distance being only two and a half *coss*. The darogah was absent from the thanna, but the mohurir proceeded to the spot after some hours' delay, so that the confession of the captured man was not taken until 9 A. M. of the 29th December. He confessed under the name of Sulim of Moorbanga, which is in the thanna of Hardhee, but his house is at Fuqeerabad, six or six and a half *coss* from Moorbanga, and his name is Komorudee. In his confession he took the names of all the other prisoners, except Haran* (No. 9,) and it was owing to his deposition that the others were apprehended on the 31st of December. He confessed before the magistrate at the sudder station, which is about twenty *coss* from the scene of the dacoity; and there is every reason to believe that his whole confession is true, except that he said Nobo Biswas was one of the dacoits. There is reason to suspect that this man was aware of all the particulars of the dacoity, but that he did not take any active part in it. Adam Sheikh (No. 2,) of Boalea, about five miles from thanna Hardhee,

* Acquitted by the lower court.

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was apprehended on the 1st of January, and confessed to the dacoity the same day before the police, and on the 3rd January he confessed before the magistrate. He is convicted on his confessions. Hanif Mundul (No. 3,) of Baugbareea, about five miles from Hardhee, was apprehended on the 1st of January and made a confession on the same day before the police. The original paper of confession was, however, destroyed, and another, which was supposed to be a copy of it, was substituted and signed by witnesses, but it does not appear that the copy was read to the witnesses. I therefore set aside this confession altogether. On the 3rd of January he made another confession before the magistrate. He said that he went with the dacoits, and guarded their clothes while they committed the dacoity, and made a demand for his share of the spoil. I convict him on his confession of being an accomplice in committing the dacoity. Fuqeer Mahomed (No. 4), of Ambareea, about four miles from Hardhee, was apprehended on the 2nd of January by the mohurir of Dewangunge, and was taken from the prosecutor's house, a distance of about thirty miles, where he confessed before the darogah. He was lame at the time, owing to a bubo in his groin, which was bleeding when he confessed. Before the dacoity, he took some time to go from his house to Muktada. He left his home on the 26th of December, and went to Baugbareea. a distance of four *coss*, and the next day he went to Gorabareea, a distance of seven *coss*, and the next night to Muktada which is five *coss* more. He was apprehended in his own village, and thence taken back a distance of about fifteen *coss* to Muktada. Now, according to the opinion of the civil surgeon, the wound might have been chronic on the 27th of December last; and if so, he might have walked at first with comparatively little pain; but the pain would have increased with continued exertion, and if the wound was in a chronic state of inflammation he thinks that the first thirty miles might have been walked without excess of pain. Five other prisoners whom I have convicted on their confessions have accused this prisoner. When he was at Gorabareea, he visited a woman who had been his mistress. There is every reason to believe that his confession before the police is true; and the only reason to suspect that it was extorted is that he must have suffered pain from his long walk; but this is overcome by the circumstance of his afterwards having gone to the sudder station, forty miles, and his there having denied his guilt, on the 6th of January. I convict him on his confession before the police of being one of the dacoits. The prisoner Aradhun, (No. 6,) of Hatabanga, two *coss* from Hardhee, was apprehended and taken to the thanna by the villagers on the 7th of January, and he that day confessed before the police, and on the 9th of January he confessed before the magistrate. He said that he was at the dacoity and held

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a *mussal*. I convict him on his confession. Kureem Molla (No. 7) of Nugurbanka, four or five miles from Hardhee, appeared before the magistrate at the sudder station on the 6th of January, and was thence sent off on the 7th January to the thanna of Dewangunge, a distance of more than forty miles. On the 8th of January he arrived at the thanna and confessed before the darogah that he went with the dacoits, but took no part in the crime, and he sat under a tree while the others committed the dacoity. He made a similar confession before the magistrate on the night of the 10th of January, and said that he refused to partake of the spoil which was offered to him. Five other confessing prisoners said that he was one of their party. Although it is highly improbable that this man should have gone thirty miles with a gang of robbers who committed a dacoity, and not have participated in it, and even have refused to partake of the spoil when it was offered to him, yet as there is no evidence against him but his confession, he can only be convicted of the crime which he has confessed, *viz*., privity to the dacoity."

Sentence passed by the lower court.—Nos. 1, 2, 3, 4 and 6, each fourteen (14) years' imprisonment with labor and irons, and No. 7, seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"From the proceedings it appears that a dacoity took place in the house of the prosecutor, and while the robbers were in the house, Pran Napit, Bhagerut and others, came to oppose them. Pran, after a short fight with sticks, secured the prisoner Sulim, with the help of the neighbours. Sulim confessed the robbery, and mentioned the names of his accomplices; they were apprehended as soon as possible, and confessed the part they took in the robbery before the darogah and mohurir in the zemindaree *kutcherry*. Subsequently they all, with the exception of one man, Fuqeer Mahomed, again made the same confessions to the magistrate. The evidence against Fuqeer Mahomed is only the confession before the darogah, and although I am generally disposed to look with suspicion on these Mofussil confessions, the proceedings in this case have been so well conducted that I entertain no doubt of the truth of this confession. I think the sessions judge has rightly convicted the prisoners Sulim, Adam, Hanif, Fuqeer Mahomed, Aradhun and Kureem Molla, and I see no reason to interfere with the sentence he has passed on them.

"I consider this case to reflect much credit on the police of zillah Nuddeah and on the magistrate in charge of it. It is very satisfactory to find that the villagers have been induced to come forward and oppose the dacoits. These men Pran Napit and Bhagerut deserve a reward for their gallantry. A single instance

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of successful opposition by the villagers themselves is likely to induce others to follow their example, and will thus do more to improve the police and put down this very prevalent crime of dacoity than any measures which can be taken by the authorities. I find also that the darogah and mohurir have conducted their Mofussil proceedings with care and energy; the examinations and proceedings also before the magistrate himself evince much ability and a thorough knowledge of his duty. It is seldom that the confessions in a dacoity case bear so clearly the stamp of authenticity or are recorded and proved throughout in so satisfactory a manner. The whole proceedings in the case reflect much credit on the magistrate both as regards his own personal share in them and as superintendent of the subordinate police authorities."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

RADHAE BAG

versus

GOORAIE MAL (No. 20), JEEHUL MAL (No. 21), KELLAH MAL (No. 22) AND MODOOSOODUN MAL (No. 23).

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Four prisoners convicted of dacoity, chiefly on evidence to recognition at the time of dacoity, released on appeal, in consequence of suspicions attaching to this and other proofs in the case.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor, in which dacoity the prosecutor was slightly wounded by them and property to the value of rupees 264-2-5, was plundered by them on the night of 26th October 1851, corresponding with the 10th Kartick 1258 B. S.; and 2nd count, Nos. 20 and 21, knowingly receiving and possessing property acquired in the said dacoity.

CRIME ESTABLISED.—Nos. 20 to 23, dacoity in the house of the prosecutor, in which dacoity the prosecutor was slightly wounded by them and property to the value of rupees 264-2-5, was plundered.

Committing Officer, Mr. C. H. Campbell, officiating joint magistrate of West Burdwan.

Tried before Mr. Taylor, sessions judge of West Burdwan, on the 19th March 1852.

Remarks by the sessions judge.—" The prisoners, who pleaded 'not guilty,' entered the house of the prosecutor and *looted* it on the night of the 10th Kartick, with swords, *lattees*, *mussals* and *kooralees* in their hands, but without any color or disguise of any kind upon their faces. The violence consisted of slight blows with a *lattee*, one of which made the prosecutor's nose bleed, and cut it slightly. Nothing but intimidation was appa-

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rently intended by it. Two of the prisoners, *viz.*, Nos. 22 and 23, are neighbours of the prosecutor, and the other two resided in a village about half a *coss* off. The dacoits set a corner of a hut on fire, but immediately put it out again.

"The crime was distinctly proven against Nos. 20 and 21, by the evidence of eye-witnesses, the fact of a portion of the stolen property, including an easily-recognizable *huslee* or necklace, and a pair of *currahs*, or bracelets, the latter of which had been wrenched off the wrists of the prosecutor's young nephew, having been found in their houses before credible witnesses, and their inability to account for their being there in any satisfactory manner. They pretended that the articles in question had been introduced into their houses; but I saw no reason to think so. They brought witnesses to swear to certain *lotahs* and clothes, as their own property, but I saw reason to doubt the depositions of the latter, as they had had opportunities of seeing the articles in the houses of the prisoners before they were searched, and it is not difficult to prepare such witnesses beforehand by describing size, color, &c. Jeehul Mal (No. 21,) was the prisoner pointed out by prosecutor as the one who struck him.

"The prisoners Nos. 22 and 23 were convicted on the evidence of the eye-witnesses, but no property was found in their houses. The evidence was exceedingly clear and satisfactory, and I considered it sufficient, under the circumstances, to warrant their conviction. There was no reason whatever for their having been named by the prosecutor and witnesses, if they had not been present, and they attempted no defence of any kind.

"As the witnesses deposed to the very bad character of Gooraie Mal (No. 20,) and Jeehul Mal (No. 21,) and the property recovered was found in their houses, I considered them worthy of a heavier punishment than the other two prisoners, who were very probably persuaded to join in the crime by them.

"I did not inflict the heaviest punishment of dacoity upon any of the prisoners, because the personal violence was very slight, and it did not appear that they had ever been guilty of so heavy a crime before."

Sentence passed by the lower court.—Nos. 20 and 21, each, eight (8) years' imprisonment with labor in irons, and two (2) years in addition in lieu of corporal punishment, altogether ten (10) years, and Nos. 22 and 23, each, seven (7) years' imprisonment with labor in irons and one (1) year in addition in lieu of corporal punishment, altogether eight (8) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoners in this case have been convicted chiefly on the evidence of the prosecutor, and three witnesses, who deposed to recognizing them at the time of the dacoity.

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"On the little degree of credit to be attached to such evidence, I have stated my opinion fully in my note of the 5th instant, on the trial of the prisoners for a dacoity at the house of Bhyrob Mundul referred from Bancoorah, in which district this case was also tried.

"It is remarkable that in this, as in that case, no indication of the existence of such important evidence is contained in the reports of the police until a late stage in the inquiry, after the prisoners had been apprehended. The witnesses to the recognition of the prisoners are those cited by prosecutor to prove that the property found is his own, and all identify the self-same persons among the whole gang of fifteen or twenty dacoits.

"In this case the prosecutor and three witnesses were all in different positions, nevertheless they all depose to recognizing the same persons, neither more nor less. Two of the prisoners live in the same village as the prosecutor, and the two others within hearing thereof as appears from the evidence of the chowkeedar of their village, who heard the noise at the time of attack.

"It is extremely unlikely that they would undisguisedly go to rob the house of the prosecutor, to whom they were so well known.

"The prosecutor, to the police, stated, that he recognized a fifth man, Nara Mal, and the police reported that the eye-witnesses also recognized him. In the subsequent stages, the prosecutor dropped his name, and the eye-witnesses with one exception followed his example. The exception alluded to is Odyt Mal, who in his deposition to the magistrate, included him among the persons he had identified, but dropped his name afterwards in the sessions court. A person named Manick was sent in by the police as an eye-witness, who identified the same individuals among the dacoits, but he deposed to the magistrate that he knew nothing about it, and that he had stated to the police that he did recognize the prisoners *from fear*. This is significant. On a consideration of the above-noticed circumstances, the improbabilities and the extraordinary coincidences which a belief in the evidence to recognition must also involve a belief in, I cannot accept the proof as trustworthy.

"Next as to the alleged discovery of plundered property in the houses of Jeehul and Gooraie Mal.

"I observe that the prosecutor, with the exception of some stone platters, claimed as his own all the property which was found in the houses of the prisoners named by him. In those of Modoo and Kelya, inhabitants of his own village, none was found. In that of Jeehul Mal a *lota*, a *batee*, and a *saree* were found lying about, and these were claimed as his own by the prisoner, and were proved to be his by one witness. A necklace *(huslee)* which was said to have been found in or *on* a basket (as one witness says) he repudiates, and says that it must have

been introduced into his house, and that the search was not made fairly in his presence, and as is usual, by respectable neighbours, but by persons brought by the police mohurir.

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"At Gooraie's house a *lota*, and a *batee* were found with his stone platters, and a pair of bracelets in a *poora* of paddy. The former two articles the prisoner claims as his own, proving them to be such by the evidence of one witness, and asserts that the bracelets must have been surreptitiously introduced. He pleads the same irregularity in the search as Jeehul Mal does. I find that the prisoners have some ground for their complaint of irregularity in the search, for it was made by persons who appear to be subordinate rural police officers, and it is remarkable that the articles, which both the prisoners repudiate, were brought out by the same individual, Radhay Chowkeedar.

"The case against the prisoners has very much the aspect of being got up. They themselves in their appeal attribute the preparation of the proof to Bungsy Digar and Bissoo Digar in connivance with the prosecutor.

"There is too much of a suspicious nature in the proceedings to admit of the conviction, against which all the prisoners have appealed, being confirmed.

"The prisoners will be released."

PRESENT:

W. B. JACKSON, and J. R. COLVIN, } ESQRS., *Judges*.

MUSST. PUNCHOO AND MEAJAN *versus* HYDER.

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The prisoner, upon some petty altercation during the *Hoolee* festival, severely wounded with a sword one party who had interfered to put a stop to the dispute, and then, on another party giving the alarm, struck at him also with the sword, cut him to the brain, and killed him. It appeared that the prisoner had been drinking, but was quite in his senses. This circumstance, and the excitement of the festival, not admitted to be any excuse for such reckless violence and taking of life; a capital sentence passed on the prisoner.

CRIME CHARGED.—1st count, wilful murder of Laljee Kandoo by wounding him with a sword, of which wound the said Laljee immediately afterwards died; and 2nd count, severely wounding Meajan, prosecutor, with a sword.

Committing Officer, Mr. L. S. Jackson, officiating magistrate of Patna.

Tried before Mr. G. Gough, commissioner of Patna, with the powers of a sessions judge, on the 12th April 1852.

Remarks by the Commissioner.—"The particulars of this case are briefly as follows:—On the evening of the 6th March last, during the Hindoo festival of the *Hoolee*, it appears that a quarrel occurred between the prisoner Hyder and a person of the name of Nunkoo, a witness in the case, in the course of which the prosecutor Meajan interfered, with a view of putting a stop to the dispute, which led to the prisoner's attacking Meajan with a naked sword, with which he wounded him on the neck and hand. The deceased Laljee, who was present, immediately called out that Meajan was wounded; on which the prisoner instantly turned on him, and inflicted a desperate wound on his head, which killed Laljee on the spot.

"The above is an exact statement of the occurrence. There does not appear to have been any previous enmity between the prisoner and any of the parties; and the attack made upon Meajan and Laljee, seems to have resulted from sudden and violent passion, though it is stated, however, that the prisoner was excited by drink, but not intoxicated, or in any degree incapacitated from comprehending what he was doing.

"The evidence is clear, and leaves not a shadow of doubt as to the guilt of the prisoner, who in his defence, proves nothing to exonerate himself of the charges preferred against him. The law officer convicts him of the wilful murder of the deceased Laljee and wounding Meajan, a finding in which I entirely concur.

"Considering the enormity of the crime committed by the prisoner, and finding nothing whatever which can reasonably be admitted in extenuation, it is my duty to recommend that the prisoner Hyder be sentenced to suffer capital punishment."

In continuation of the above Report, the Commissioner submitted the following letter, No. 1644, dated 17th April 1852.

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"With reference to my letter No. 1643, of this date, submitting the trial noted in the margin for the final orders of the court, I have the honor to forward at the desire of Mr. Louis F. Jackson, magistrate of Patna, the accompanying letter* to my address from that officer, for the consideration and orders of the court.

Musst. Punchoo and Meajan, prosecutors *versus* Hyder, defendant.

* *From the Magistrate of Patna to the Commissioner of Patna, No. 269, dated 17th April 1852.*

"I have the honor to acknowledge the receipt of your letter No. 1596, dated the 8th instant, in which, having quashed the two commitments noted in the margin, you direct me to commit the prisoner afresh as for a single offence on the prosecution of the Government pleader.

Wilful murder of Laljee Kandoo and severely wounding Meajan with a sword.

"I complied immediately with your instructions in the matter, and the case has been disposed of accordingly. But as I stand at present in the position of having committed an irregularity of such importance as to render it necessary that you should quash the commitment I had made, and postpone the trial until the case was re-committed; as the case is, I understand, likely to go before the higher court; as I have not hitherto been allowed an opportunity of explaining the reasons for which I sent the case before you in its former shape; and lastly, because cases of the same kind may easily happen again, I venture to trouble you with this letter, which I beg may be submitted to the court with your letter of reference.

"The ground on which I made two separate commitments, was simply this, that the two offences, though committed at an interval only of a few moments, were the result of separate and successive impulses, independent of each other. There is a broad distinction between this case and that of an affray where in a general *melée* one or more persons successively wound several others of one party; in such a case the whole body on either side act as one, upon a common impulse, and all that occurs in such an encounter is one continued offence.

"Here, on the other hand, the murdered and the wounded persons are unconnected: they had no common quarrel with the prisoner, nor were they in any way united against him, but each of them singly and successively by an act of his (however innocent and lawful,) aroused the passions of the prisoner, and thus led to the catastrophe in both cases.

"My recollection of the cases is this (I have not the papers at hand) that in witnessing a quarrel between the prisoner and Nunkoo, one of the sufferers, I believe Meajan, came forward to interfere, upon which Hyder wounded him and then moved away. Here the matter might have ended, but that some others, and Laljee among them, raised an outcry and rushed forward. This again incensed the excited culprit, who *turned again*, rushed at Laljee and cut him down. The *corpus delicti* is, I respectfully maintain, in either case complete and separate.

"Your objection to my procedure is briefly, that the acts charged were committed at the same time and place, in presence of the same witnesses, and arising out of the same cause. With regard to the last part of the objection, which, if well-founded, would certainly have weight, I submit

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"The court will observe, on perusal of my letter No. 1596,* dated 8th instant, the grounds on which I thought it advisable to quash Mr. Jackson's proceedings in regard to making two separate commitments in this case. The crimes with which the prisoner was charged were of the same nature, resulting from an attack made by him on two persons with a sword, with which he inflicted a mortal wound on one, and another of less magnitude on the other. This occurred at the same time, the same place, and in presence of the same parties. To make therefore two separate commitments under such circumstances,

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that the history of the case as I have given it above, shows that the two acts did not arise out of one cause, but out of two successive causes. With regard to the continuity of time and place, I venture to observe that the same remark would apply to a thief who in a crowd should pick the pockets of half a dozen gentlemen, in half a dozen minutes, watched by the same detective policemen, and within the same two square yards of ground. These, indeed, would be cognate offences: yet no one, I imagine, will contend that they should be included in a single indictment; and other instances of the same kind might be easily adduced:—for example in the assault of a town, or, excited by drunkenness, a man might commit a rape on two or more females in the same house; yet this would not, I imagine, form one charge only, though happening before the same persons, and under the one excitement.

"On the whole, if I am not right in thinking that my procedure in the case under discussion was the correct procedure, I at least hope the superior court may consider that the informality, if any, was not sufficiently important to require the public annulling of my orders, especially as, if the point was one of indifference, as great public inconvenience resulted from the course taken, as if the separate trial had been proceeded with."

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* *From the Commissioner of Patna, to the Magistrate of Patna, No.* 1596, *dated 8th April* 1852.

"With reference to your two separate commitments of the prisoner Hyder, as noted in the margin, in which that individual is charged in the first instance, with the wilful murder of Laljee by wounding him with a sword which caused immediate death, and in the second, with wounding Meajan with a sword, I beg to observe that, as it would appear from the record that the alleged acts occurred at the same time and place, consequent on the interference of Meajan in a quarrel between the prisoner and a person named Nunkoo, they must be held as cognate offences, occurring almost at the same moment, and originating in the same cause, and perpetrated in the presence of precisely, the same parties now brought forward as witnesses in the separate commitment.

Wilful murder of Laljee Kandoo and severely wounding Meajan with a sword.

"Under such circumstances, I am of opinion that instead of making two separate commitments, as you have done, you should have made but one commitment on the two charges of wilful murder and severe wounding.

"I therefore quash the two commitments you have made, under the authority vested in me by the Court's Circular, No. 13 of the 14th November 1851, and direct that you re-commit the prisoner as above-indicated, and appoint the Government pleader to prosecute, instead of the parties you have named as prosecutors, in the commitments now cancelled.

"The calendars and records received with them are herewith returned.'

and hold two separate trials in which precisely the same witnesses were to be examined, seemed to me wholly uncalled for, and I accordingly quashed Mr. Jackson's proceedings and directed him to make one commitment, preferring two charges, *viz.*, murder and wounding, against the prisoner, and to appoint the Government pleader to prosecute.

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"Mr. Jackson now impugns my procedure, and begs that his letter may be submitted to the court with the case. This I have now the honor to do; and as the court will have the whole of the proceedings and correspondence before it, I trust it will find nothing to disapprove of in regard to the orders I issued to the magistrate, quashing the separate commitments made by that officer.

"There is an error in the second para. of Mr. Jackson's letter, in which he states that he complied with my instructions. My instructions were to appoint the Government pleader to prosecute, which I thought would be more convenient than having two separate prosecutors. This, however, was not done, when the case was re-committed; but as the omission apparently occurred from inadvertence, and was of no material consequence, I proceeded with the trial. There is also another error in the fifth paragraph of Mr. Jackson's letter, in which he says that the prisoner *turned again* to attack Laljee. This was not the case; for it appears that he never left the spot where he wounded Meajan; but, then and there, and without any interval of time, inflicted the blow which killed Laljee."

Remarks by the Nizamut Adawlut.—(Present: Messrs. W. B. Jackson and J. R. Colvin.)—MR. W. B. JACKSON.—"There was a dispute between the prisoner Hyder and one of the witnesses Nunkoo. Meajan interfered and stopped them; a little after the prisoner Hyder, who had a sword in his hand, ran at Meajan, and cut him over the head and on the left hand; the deceased Laljee then called out 'Hyder has wounded Meajan.' Hyder then ran at deceased, and struck him a blow on the head with his sword, which went through the bone and into the brains. Laljee fell dead These facts are established by the eye-witnesses, and by the *post mortem* examination of the body. It appears from the evidence that Hyder had been drinking and smelt of liquor; but he was quite in his senses. I would convict Hyder of the murder of Laljee, and wounding Meajan severely; and would sentence him to suffer death.

The prisoner was committed for trial in two separate cases, one for the wounding and one for the murder. The commissioner quashed the commitment, and ordered the prisoner to be committed on both charges in one case; to this the magistrate objects. I think the commissioner's directions were right and proper. The occurrence was a single case; and the two acts constituting it

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were so connected together that it was proper they should be both tried at the same time. The magistrate's objections appear to me to have no force in them; moreover, he is deserving of censure for not carrying the order of the commissioner more strictly into execution. The commissioner directed the Government to be made prosecutor, which was obviously correct, as the two prosecutors were eye-witnesses, but the magistrate neglected this order."

MR. J. R. COLVIN.—" It is clearly proved that, upon some petty altercation, during the *Hoolee* festival, the prisoner Hyder first wounded the prosecutor Meajan with a sword which he had taken with him, and then, on the deceased, Laljee, giving the alarm, struck also at him with the sword, cut him to the brain, and killed him.

"The excitement of the festival can be no excuse for such reckless violence and taking of life, and I, therefore, concur in the proposed capital sentence.

"I concur also with Mr. Jackson in thinking that the order of the commissioner with the powers of a sessions judge, for the commitment of the prisoner upon the counts both of murder and of wounding in a single case was, under the circumstances, perfectly correct. The whole was obviously one closely-connected transaction. The magistrate ought not to have remonstrated against such an order, which it was entirely within the discretion of the sessions court to issue. I observe that the commissioner ascribes the neglect in carrying out his orders for the sending up this case as on the prosecution of Government to inadvertence only on the part of the magistrate."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

BALUCK MOOCHEE

versus

BHOLAIE MUNDUL (No. 1), KAMUDDEE MUNDUL (No. 2), ZAMEER MUNDUL (No. 3), BUDDEN MUNDUL (No. 4) AND NAZIR MUNDUL (No. 5).

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Case of BHOLAIE MUNDUL and others.

In a case of dacoity one prisoner caught in the fact and others convicted on strong proof. Their appeal therefore rejected.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor on the night of the 19th December 1851, or 5th Poos 1258, and plundering therefrom property valued at Company's rupees 921-1-0; and 2nd count, Nos. 2 and 3, having in their possession some portions of the stolen property, knowing the same to have been obtained by robbery by open violence.

CRIME ESTABLISHED.—No. 1, dacoity, Nos. 2 and 3, having in their possession stolen property knowing the same to have been obtained by dacoity, and Nos. 4 and 5, accomplices in dacoity.

Committing Officer, Mr. J. R. Muspratt, officiating joint magistrate of Baraset, 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 2nd March 1852.

Remarks by the sessions judge.—" The prosecutor deposed that on the night of the 5th Poos last, at 12 o'clock, his house was attacked by about seventeen or eighteen dacoits, some with *lattees* and some with *mussals*, who broke open two chests and plundered his clothes, and snatched away gold and silver ornaments from the persons of the females in his house. Prisoner No. 1, Bholaie Mundul, being apprehended by Abid Mollah, witness No. 1, assisted subsequently by other neighbours, and the prosecutor himself wounding one of the dacoits whom he could not recognise. It appeared further from his statement that, from information received by the darogah, some of the plundered property deposited in the house of witness No. 15, Gopal Mundul, by prisoners Nos. 2 and 3, Kamuddee Mundul and Zameer Mundul, was recovered and recognized. The prisoners denied the charges on which they were arraigned in this court. Prisoners Nos. 2 and 3, Kamuddee Mundul and Zameer Mundul, in the Mofussil and before the magistrate, admitted that prisoner No. 4, Budden Mundul and prisoner No. 5, Nazir Mundul, brought two bundles to them, saying that there was to be an attack on their village; that when the house of prisoner No. 5 was afterwards surrounded by the police, they opened the bundles, saw they contained new clothes, and, under the influence of fear, removed them to the house of witness No. 15, Gopal

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Case of BHOLAIE MUNDUL and others.

Mundul, denying all knowledge of the property having been obtained by dacoity. In the Mofussil prisoners Nos. 4 and 5, Budden Mundul and Nazir Mundul admitted their being accomplices in the dacoity, the former having been apprehended by the darogah with a wound on his body. Witness No. 1, Abid Mollah, confirmed the prosecutor's statement as to the fact of the dacoity on the night in question, and the apprehension of prisoner No. 1, Bholaie Mundul. This evidence being corroborated by witness No. 2, Premchand Chowkeedar, witness No. 3, Gonai Dona, witness No. 4, Bheekoo Dome, and witness No. 5, Poran Potooah, witness No. 22, Moyjooddee Mundul and witness No. 23, Moozdeen Mundul, deposing to their seeing marks of violence in the prosecutor's house on the night in question, and prisoner No. 1, Bholaie Mundul, in custody. Witness No. 24, Kanai Chowkeedar, deposed to the absence of Bholaie, (prisoner No. 1,), from his village on the night in question, and was supported in this statement by witness No. 27, Rutton Mundul, witness No. 28, Koaszee Mundul and witness No. 29, Tajudee Mundul. Witness No. 15, Gopal Mundul and witness No. 17, Sulleem Mundul, deposed to the recovery of part of the plundered property, consisting of clothes, from the house of witness No. 15, deposited there by prisoners Nos. 2 and 3, Kamuddee Mundul and Zameer Mundul; and witness No. 19, Pittamber Moochee and witness No. 20, Gopal Moochee, recognized it as belonging to the prosecutor. Prisoner No. 1, Bholaie Mundul, did not cite any witnesses. Prisoner No. 2, Kamuddee Mundul, pleaded old age and infirmity to show the improbability of his having been concerned in the dacoity. Neither he nor prisoner No. 3 required the witnesses they had cited. Prisoner No. 4, Budden Mundul did not want his witnesses, and declared that the wound he had, was caused by his falling upon a bamboo. Prisoner No. 5, Nazir Mundul, did not require his witnesses. The jury considered the first count proved against all the prisoners, and the second count, against prisoners Nos. 2 and 3. I considered prisoner No. 1, Bholaie Mundul, guilty on the first count, and prisoners Nos. 2 and 3, Kamuddee Mundul and Zameer Mundul, on the second count, and prisoners Nos. 4 and 5, Budden Mundul and Nazir Mundul, guilty of being accomplices in dacoity, and sentenced them to imprisonment accordingly."

Sentence passed by the lower court.—" Nos. 1, 4 and 5, each, ten (10) years' imprisonment with labor and irons, and Nos. 2 and 3, each, five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" All the prisoners have appealed; but have urged nothing to shake the strong and complete proof on which they have been convicted. Their appeal is rejected."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

KHETUR KURMOKAR

versus

SUDDANUNDO OORYA (No. 1), GUDDADHUR KURMOKAR (No. 2), BYKUNTNATH DASS (No. 3) AND GOBIND KURMOKAR (No. 4).

1852.

May 12.

Case of SUDDANUNDO OORYA and others.

One prisoner convicted of dacoity, and two others of having in possession property obtained by that dacoity, and one of being accessary before and after the fact. Appeal rejected.

CRIME CHARGED.—1st count, dacoity in the house of the prosecutor on the night of the 22nd January 1852, or 19th Poos 1258, and plundering therefrom property valued at Company's rupees 107; 2nd count, Nos. 1 and 2, having in their possession part of the plundered property knowing the same to have been obtained by robbery by open violence; 3rd count, Nos. 1 and 2, accessaries after the fact; 4th count, No. 4, accessary both before and after the fact.

CRIME ESTABLISHED.—Nos. 1 and 2, having plundered property in their possession knowing it to have been obtained by dacoity; No. 3, accomplice in the dacoity, and No. 4, accessary to dacoity before and after the fact.

Committing Officer, Mr. J. R. Muspratt, officiating joint magistrate of Baraset, 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 4th March 1852.

Remarks by the sessions judge.—"The prosecutor deposed that on the night of the 19th Poos last, about three *puhurs*, his house was attacked by about five or seven dacoits in disguise, who plundered his property, consisting of gold and silver ornaments, brass utensils and clothes, and about rupees 16 in cash, two of the dacoits keeping him in duress all the time, some of them having *lattees* and *mussals*, one of them a *sind katee*, No. 4, and another an iron instrument, No. 18, now in court. It appeared that early on the morning after the dacoity, prisoner No. 1, Suddanundo Oorya, was apprehended at Baraset with some of the plundered property, consisting of brass utensils and clothes, which the prosecutor recognized as his own. The prisoners denied the charges on which they were arraigned in this court. In the Mofussil prisoner No. 1, Suddanundo Oorya, admitted having property in his possession which he knew to be obtained by dacoity. Before the magistrate he admitted his being an accessary after the fact. Prisoner No. 2, Guddadhur Kurmokar, admitted having property which he suspected must have been stolen. Before the magistrate the reception was admitted without specifying his knowledge as to how the property had been obtained. Prisoner No. 3, in the Mofussil and before the

1852. May 12. Case of SUDDANUNDO OORYA and others.

magistrate, admitted his being an accomplice in the dacoity. Prisoner No. 4, in the Mofussil and before the magistrate, admitted his being an accessary before and after the fact. Witness No. 27, Harrish Dass, peadah, deposed to the fact of the prisoner No. 1, Suddanundo Oorya, having absconded in a previous case of theft; to his seeing him early on the morning of the 20th Poos last entering the house of Musst. Nund Bewah, witness No. 22, with a bundle; to his communicating his suspicions to the nazir and to the apprehension of the prisoner with sixteen different articles and a *sind katee*. Witness No. 28, Nuffer Kalloo, recognized the iron instrument, No. 18, as his own which he had placed with prisoner No. 4, Gobind Kurmokar, for repair. Witness No. 29, Joy Narain Kurmokar, and witness No. 30, Pittambur Kurmokar, corroborated the prosecutor's statement as to the fact of the dacoity and the plunder of his property. Witness No. 22, Musst. Nund Bewah, deposed to the fact of prisoner No. 1, Suddanundo Oorya, coming to her house with a bundle. The recovery of property, consisting of clothes and brass utensils from the house of witness No. 22, Nund Bewah, where prisoner No. 1 was apprehended, as well as its recognition as the property of the prosecutor, was established in evidence. Prisoner No. 1, Suddanundo Oorya, had no witness. Prisoner No. 2, Guddadhur Kurmokar, declared he received the axe, No. 17, from prisoner No. 3, Bykuntnath, for repair, and his witnesses will prove that this prisoner asked for it before the darogah. Prisoner No. 3, Bykuntnath, cited witnesses to prove that he was at his own house at the time the dacoity is said to have occurred. Prisoner No. 4, Gobind Kurmokar, did not require his witnesses. The jury considered the first and second counts proved against prisoners Nos. 1 and 2; and prisoners Nos. 3 and 4 guilty of being accessaries. I considered prisoner No. 1, Suddanundo Oorya, and prisoner No. 2, Guddadhur Kurmokar, guilty upon the 2nd count; prisoner No. 3, Bykuntnath Dass, guilty of being an accomplice in dacoity, and prisoner No. 4, Gobind Kurmokar, guilty upon the fourth count, and sentenced them to imprisonment accordingly."

Sentence passed by the lower court.—Nos. 1 and 2, each, five (5) years' imprisonment with labor and irons, and Nos. 3 and 4, each, seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoners in this case have been convicted on full and satisfactory proof, and there is no reason to interfere with the sentences passed. Their appeal is therefore rejected."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

MENA SHEIKH, ON THE PART OF BULORAM MOJOOMDAR,

versus

ROHUMDEE SHEIKH, (No. 1), MEENOO SHEIKH (No. 2), SIBNATH SINGH (No. 3) AND RAMSOONDER DOSS (No. 4).

1852.

May 14.

Case of ROHUMDEE SHEIKH and others.

The proof (his Mofussil confession unsupported by other circumstantial evidence) against one of the prisoners being considered insufficient, he was acquitted. The conviction and sentences passed upon the others affirmed.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor's employer, in which property to the value of rupees 787-10-6 and a bond of rupees 104 were stolen; and 2nd count, knowingly receiving and possessing the aforesaid stolen property.

CRIME ESTABLISHED.—Nos. 2 to 4, accomplices in burglary and knowingly receiving stolen property, and No. 1, knowingly receiving stolen property.

Committing Officer, Mr. J. J. Ward, joint magistrate of Pubna, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 26th March 1852.

Remarks by the sessions judge.—"This was a very heavy burglary committed in the house of a respectable merchant, or money-lender. On the information of an informer, by name Serajdee Sheikh, the first prisoner was apprehended, and admitted that he had received a silk *dhotee*, part of the stolen property, from the prisoner No. 3. This led to the apprehension of the other three prisoners, when Nos. 2 and 3 confessed before the police that they had been concerned in the burglary, and No. 4 that he was close by and had received afterwards 13 rupees of No. 3; No. 4 at the same time delivered up 8 rupees and two 8 anna pieces in a bag to the police. The discovery of the property and cash in the houses and premises of the prisoners Nos. 2, 3, and 4 being clearly proved, as well as the confessions, made by them before the police to have been voluntary, and No. 1, pleading 'guilty' in this court, I have (fully concurring in the *futwa*) sentenced them as stated in the preceding column. As Nos. 2, 3 and 4 seem to be dependents or servants of the zemindar, and the value of the property recovered falls short by rupees 441 of what was stolen, I have directed the joint magistrate to recover, under Act XVI. of 1850, the sum of rupees 441 as a fine from these three prisoners, and in default of payment to attach and sell their property to recover the amount. The sale, however, not to be held till the expiration of three months in case of an appeal."

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May 14.

Case of ROHUMDEE SHEIKH and others.

Sentence passed by the lower court.—No. 1, three (3) years' imprisonment with labor and irons, and Nos. 2, 3, and 4, each, four (4) years' imprisonment with labor and irons, and a fine of rupees 147 under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Sir Robert Barlow, Bart.)—"The prisoner No. 1, confessed throughout to receipt of the property knowing it to have been stolen.

"Prisoners Nos. 2, 3, and 4 are said to have confessed in the Mofussil.

"Money only was produced from the house of prisoner No. 2, he is a paik of the village. The gomashta and several others depose to having left a great deal of their money in his hands. His witnesses give him a good character. I do not rely on his Mofussil confession unsupported by other circumstantial evidence, and acquit him.

"Gold and silver ornaments buried were pointed out and produced by the prisoner No. 3, many of these had been put in pawn by their owners, who have sworn to the property in court.

"Prisoner No. 4, in his Mofussil confession, admitted he was on the spot at the time of the burglary. He also gave up 8 rupees, 8 annas, which he said he had received from prisoner No. 3, adding he had paid 4 rupees on account of rent due by him.

"I see no reason to interfere with the sessions judge's order in respect of the prisoners Nos. 1, 3 and 4.

"There is not sufficient evidence for conviction in the case of prisoner No. 2: he is acquitted and must be immediately released."

PRESENT:

SIR ROBERT BARLOW, BART., *Judge.*

GOVERNMENT

versus

RAMJEEBUN DOME CHOWKEEDAR (No. 1) AND ETWARY KHAN (No. 2).

1852. May 14.

Case of RAMJEEBUN DOME CHOWKEEDAR and another.

The prisoners were convicted, the one of suborning the other, and he of perjury in giving evidence under a false name.

CRIME CHARGED.—No. 1, perjury, in having, on the 6th September 1851, corresponding with 22nd Bhadoon 1258 B. S., deposed, under a solemn declaration taken instead of an oath, before the pundit of Moorshedabad, that his name was Gour Chowkeedar, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case. No. 2, subornation of perjury, in having on the above date intentionally and deliberately caused the above false deposition to be given by Ramjeebun Dome before the said officer on a point material to the issue of the case.

CRIME ESTABLISHED.—No. 1, wilful perjury, and No. 2, wilful subornation of perjury.

Committing Officer, Mr. T. C. Loch, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 17th February 1852.

Remarks by the sessions judge.—"The Government was prosecutor in this case, and the charges were clearly proved against both the prisoners. One Sewuck Mundul preferred a complaint before the pundit against the prisoner Etwary Khan, &c. Etwary Khan named Gour Chowkeedar as a witness for the defence, but in his stead brought the prisoner Ramjeebun Dome Chowkeedar, and Ramjeebun, concealing his own name, deposed on oath under the false name of Gour Chowkeedar. The false deposition was wilfully and deliberately given.

"Ramjeebun Dome in his answer states, that he personated Gour Chowkeedar at the instigation of Etwary Khan, and Etwary in his answer states that he believed Ramjeebun Dome's name to be Gour Chowkeedar and brought him as such to give evidence.

"Etwary Khan produced three witnesses to prove that on one occasion Ramjeebun Dome called himself Gour Chowkeedar, but no reliance could be placed on them. The *futwa* of the law officer convicted the prisoner Ramjeebun Dome of wilful perjury, and Etwary Khan of wilful subornation of perjury, and declared them liable to *tazeer*. I concurred in the finding and sentenced them as stated in the proper column."

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May 14.

Case of RAMJEEBUN DOME CHOWKEEDAR and another.

Sentence passed by the lower court.—No. 1, three (3) years' imprisonment with labor and irons, and No. 2, five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The identity of the prisoner Ramjeebun Dome was established by the evidence of Neel Kunth and Gholamee, as is also the fact that he deposed in the pundit's court. The evidence of the two mohurirs, Gya Dhun and Denonath, proves he gave in his name as Gour Chowkeedar. The peadah, Hissamooddeen, proves the prisoner gave his name to the nazir calling himself Gour Chowkeedar, and another peadah, Delawur Khan, proves Etwary pointed him out as Gour, the prisoner Ramjeebun Dome acknowledging that name, and having been summoned as a witness to the defence of Etwary Khan, the other prisoner, I convict the prisoner Ramjeebun of perjury and confirm the sessions judge's sentence.

"The prisoner Etwary has appealed, but I see no reason to interfere with the sentence passed upon him."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

DIPCHUNDER SIRCAR (No. 1), BHUGEERUT SEAL (No. 2), MODHOO GHOSE (No. 3), AKBUR SHEIKH (No. 4), JURREEPOOLLA SHEIKH (No. 5), BUDDUN CHUNG SIRDAR (No. 6), SHOROOP SIRDAR (No. 7), RAMSOONDER CHUNG (No. 8), HURRIE BAROOR SIRDAR (No. 9), KISHTO CHUNG SIRDAR (No. 10), WAHED MAHOMED SHEIKH (No. 11), POLAN SIRDAR (No. 12), OFATOOLLA SHEIKH (No. 13), BYKUNT SIRCAR (No. 14), GRISCHUNDER SIRCAR (No. 15), RADHANATH GOOHO (No. 16), BEESHOO SHEIKH (No. 17), PORUSHOOLLA (No. 18), NEEMIE CHUNG (No. 19), SHOROOP CHUNG (No. 20), ISHUR CHUNG (No. 21), NUNDORAM CHUNG (No. 22), NOBOO CHUNG (No. 23), RAMDHUN CHUNG (No. 24), CHAND CHUNG (No. 25) AND AREEPOLLA SIRDAR (No. 26).

1852.

May 14.

Case of DIPCHUNDER SIRCAR and others.

Charge, affray with homicide and wounding. Sentence of seven years' imprisonment with labor in irons against the leaders and of four years with labor or fine against the accomplices, confirmed.

CRIME CHARGED.—Affray attended with the homicide of Hurrie Chung and wounding of Nundo Chung, Ofatoolla and Akbur, on the 23rd November 1851, corresponding with 8th Aghun 1258.

CRIME ESTABLISHED.—Affray attended with the homicide of Hurrie Chung, and wounding of Nundo Chung, Ofatoolla and Akbur.

1852.

May 14.

Case of DIPCHUNDER SIRCAR and others.

Committing Officer, Mr. F. L. Beaufort, magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 13th March 1852.

Remarks by the sessions judge.—" Heretofore disputes have arisen between the various shareholders of certain *ijmalee* property. Prisoners Nos. 1 and 14 were, last May, bound over to keep the peace for one year in securities of each 250 rupees. It is proved, from the evidence for the prosecution, that an affray arose on 23rd November last between prisoners Nos. 1 to 13 and No. 26 on one side, and Nos. 14 to 25 on the other, about certain crops. This affray was attended with the homicide of Hurrie Chung, who received his death wound from prisoner No. 12, who struck him in the ribs with a spear. The civil surgeon corroborates the testimony of other witnesses that death was caused by that blow. The same affray was also attended with the wounding of Nundo Chung, Ofatoolla and Akbur. The ringleaders were prisoners Nos. 1, 2, 3, 14, 15, 16 and 26. The other prisoners, *viz.*, Nos. 4 to 13 and 17 to 25 inclusive, were accessaries.

" The witnesses for the defence do not disprove the guilt of any of the parties. The jury found the prisoners guilty of the charge preferred in the calendar; and I concur in opinion.

" I therefore sentence Polan Sirdar (the person who inflicted the death-wound) as well as the instigators and leaders, Dipchunder, Bhugeerut, Modhoo, Bykunt, Grischunder, Radhanath and Areepolla, each to seven (7) years' imprisonment with labor in irons, and the other prisoners to four (4) years each without irons, and to pay a fine of rupees fifty (50) on or before the 23rd March 1852, or, in default of payment, to labor until the fine be paid or the term of sentence expire.

" I have had to call the magistrate's attention to the Circulars* directing that the examination of prisoners and evidence of witnesses in heinous offences should be taken down exclusively and entirely before the presiding officer."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" The offence charged is proved against all the prisoners by as complete and satisfactory evidence as can ordinarily be obtained in such cases. They appeal, urging attention to their defence and the evidence of their witnesses in support thereof. The defence of all the prisoners is, that they were elsewhere at different distances, engaged in ordinary agricultural occupations. Such a defence cannot be relied on in contradiction of such full proof of guilt. The appeal is rejected."

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* Nos. 11 to 58, vol. I. and No. 220 of vol. II.

PRESENT:

A. J. M. MILLS, and R. H. MYTTON, ESQRS., *Officiating Judges.*

MUSST. MANJUN

versus

MOHUNLALL (No. 29) AND ALUNGKAR* (No. 30.)

1852. May 14. Case of MOHUNLALL and another. Wilful murder in revenge for supposed previous theft, of prisoner's property; sentence, death.

CRIME CHARGED.—No. 29, wilful murder of Deknah, deceased, husband of the prosecutrix, and No. 30, accomplice in the above crime.

Committing Officer, Mr. A. E. Russell, officiating magistrate of Purneah.

Tried before Mr. F. Lowth, officiating sessions judge of Purneah, on the 12th March 1852.

Remarks by the officiating sessions judge.—*(Printed in detail in the trial of Alungkar, decided 1st May, vide p. 685 of the Reports for this month.)*

Remarks by the Nizamut Adawlut.—(Present: Messrs. Mills and Mytton.)—MR. R. H. MYTTON.—" The report of the sessions judge contains a very full aad accurate account of the facts in this case and of the evidence adduced.

" The first question for consideration is whether the deceased was murdered or committed suicide as suggested by the prisoner Mohunlall in his defence to the darogah. The fact of the *hansoouh*, or reaping-hook, found by the body belonging to the deceased is the only circumstance in favor of the last supposition. Every other circumstance is against it. The assistant surgeon deposes that the wound in the neck was jagged, as if made by more cuts than one, and that in his opinion it would be impossible for a person to have made such a wound with such an instrument in his own hands.

" There can be no doubt, I think, but that the deceased was murdered. Of the actual murder we have but one account, *viz.*, that contained in the confession of Mohunlall to the magistrate. In this the prisoner asserts that he did the deed unaided by any one. All the circumstances of the case point to him as being most likely to have been the principal actor, and although there may be ground for supposing that he had assistance, I find no satisfactory proof thereof. Murder was not probably contemplated, when Alungkar went to call the deceased, the object then was to obtain return of things stolen. I cannot place any reliance on the evidence of Balkee and Inder Sein to seeing the two prisoners and deceased going towards the river, before it was light in the morning. They were not obtained as witnesses for

* Acquitted by the Nizamut Adawlut on the 1st instant, see p. 685.

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Case of MOHUNLALL and another.

many days after the inquiry commenced on the spot. In the month of December natives are not stirring at that early hour and the witness Balkee, in answer to the question, how he recognized them in the dark, replied, 'by their voices.' This is the only proof against Alungkar. His admissions to the magistrate do not amount to a confession of guilt. For these reasons I consider him entitled to an acquittal.

"Of the guilt of Mohunlall there can be no doubt. I convict him of wilful murder, on his own confession to the magistrate, which has been proved to have been made voluntarily. In this he states that the deceased brought back half the property he had stolen and buried it. To the darogah he was unable to state what articles were wanting and unreturned. Seeing the deceased the following morning running in a southerly direction he took the *hansooah*, ran after him, and when he fell, cut his throat.

"No altercation is said to have occurred: the prisoner must have taken the *hansooah* for no other purpose than to use it against the deceased, and the nature of the wound, as described by the assistant surgeon, shows that the murder was committed with determination. I can hardly conceive that, as suggested by the darogah, the prisoner borrowed the deceased's *hansooah* with the intention of giving a colour of truth to a premeditated assertion that suicide had been committed. In fact that the prisoner prepared his defence before he committed the crime, I think the coincidence must have been the result of accident.

"Without attributing to the prisoner such long premeditation as that suggested by the darogah, I can find no sufficient reason for a mitigated sentence. Were the ground for mitigation adduced by the sessions judge to be accepted as sound, capital punishment would never be inflicted for a murder perpetrated secretly and in consequence of a disagreement.

"With the concurrence of another judge a sentence of death will issue."

MR. A. J. M. MILLS.—"The prisoner denied the charge before the darogah, but admitted that the deceased had, on Tuesday night, brought and left at his house some of the property he had stolen, and attributed the death of the deceased to suicide, committed through fear of the consequences of his own misdeed. But there can be no doubt that the deceased was murdered; indeed, the evidence of the surgeon as to the impossibility of the deceased himself inflicting the wound on his throat with the weapon, a reap-hook, found near the body, is on this point conclusive.

"The prisoner when taken before the magistrate made a full and voluntary confession of his guilt. He stated that the deceased escaped from his house early in the morning, and that he, taking the reap-hook with him, pursued him, and caught him, on his

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stumbling and falling in the grass jungle, and cut his throat. In the grass jungle was the body found, and the blood on the ground plainly indicated it as the place of murder. The motive for the murder was in all probability that suggested by the judge, *viz.*, that he committed the murder under irritated feelings consequent on his alleged loss, but I agree with Mr. Mytton that this is an insufficient ground, with reference to the circumstances of the case, for a mitigated sentence. I therefore concur with him in sentencing the prisoner Mohunlall to suffer death."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

RAM DASS.

1852. May 15. Case of RAM DASS. The court considered the reason assigned by the sessions judge, *viz.*, that he could not impose hard labor in the case awarding a short term of imprisonment, neither sound nor valid.

CRIME CHARGED.—Uttering certain documents, namely, a *kubooleut* purporting to be signed by Ramlochun and Ram Dass, dated 5th of Assar 1194 M. S., a *kubooleut* purporting to be signed by Tonoo Ram, dated 5th of Bysakh 1196 M. S., and a *kubooleut* purporting to be signed by Ramlochun, dated 18th of Bhadoon 1198 M. S., also three *dakhilas* purporting to be signed by Eshan Chunder Roy for Rammonee, respectively dated 7th of Poos 1210 M. S., 17th Cheyt 1202 M. S., and 5th of Poos 1203, well knowing them to be forgeries.

CRIME ESTABLISHED.—Knowingly uttering forged documents.

Committing Officer, Mr. E. F. Lautour, magistrate of Chittagong.

Tried before Mr. S. Bowring, officiating sessions judge of Chittagong, on the 23rd January 1852.

Remarks by the officiating sessions judge.—"The prisoner, on behalf of his mother Musst. Tetunnee, applied in the additional judge's court for leave to sue as a pauper; and in support of his plaint filed some *kubooleuts* and *dakhilas*. A vakeel present objected that these were forgeries, and the prisoner put on his defence, at once admitted that the originals had been filed in the collectorate. The case was sent to the magistrate and committed for trial. The evidence showed that the prisoner had filed the *kubooleut* before the deputy collector, and when called on for *dakhilas*, according to one witness, said he had none. The prisoner admitted that the *kubooleuts* filed in the civil court were copies, and said, he gave them by mistake, and forgot to say so to any one. He declared the *dakhilas* to be genuine, but called no witnesses; and it appeared that the *dakhilas* are signed by Eshan Chunder *Buqulum* Rammonee, and by a report of the

collector that Eshan Chunder died in 1189, and that during 1201 to 1203, the years the *dakhilas* bear date, the estate was under the management of the court of wards.

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Case of RAM DASS

"The jury found the prisoner guilty, and I concurred in the verdict.

"The forgery is very clumsy. The sentence may appear inadequate; but as hard labor could not be adjudged, I thought it useless to detain the prisoner more than three (3) years in jail."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner has appealed. His plea is, that he is addicted to eating opium, and that he inadvertently filed copies, instead of the original documents whilst in a state of stupefaction. I see no reason to doubt the propriety of the conviction. The sentence, too, appears adequate to the nature of the offence, which is not marked with any aggravated circumstances, but the reasons assigned for mitigating it are neither sound nor valid."

PRESENT:

W. B. JACKSON, ESQ., *Judge*.

GOVERNMENT

versus

PULTOO, ALIAS PULTAN SIRDAR.

1852.

May 15.

Case of PULTOO, *alias* PULTAN SIRDAR.

The sentence passed upon the prisoner convicted of affray attended with homicide, affirmed on appeal.

CRIME CHARGED.—Having committed a mutual affray, in which Mungul Sirdar was wilfully murdered and Burrumoollah Moonay, Khan Mahomed and Ashker were wounded.

CRIME ESTABLISHED.—Affray in which Mungul Sirdar was killed and four persons were wounded.

Committing Officer, Mr. T. Tweedie, deputy magistrate of Moonsheegunge, Dacca,

Tried before Mr. H. T. Raikes, officiating commissioner, with powers of sessions judge of Dacca, on the 19th March 1852.

Remarks by the officiating commissioner.—"A full detail of the circumstances of this case is given at page 1179 of the Nizamut Reports for the month of August last, Government *versus* Burrumoollah and others, charged with mutual affray, in which Mungul Sirdar was wilfully murdered and four others (named) were wounded.

"The prisoner was arraigned on the same charge and three eye-witnesses deposed to having seen him in the affray armed with a *sulfee* and shield and *acting* with the auction purchaser's party. He was not, however, observed to *take any active part* in the affray.

"The prisoner pleaded 'not guilty,' and set up an *alibi*; but the depositions of his witnesses on this point could not be trusted. They could give no reason whatever for remembering the date in

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Poos 1251 on which they stated they had seen the prisoner at market.

"In accordance with the *futwa* of the law officer, I convicted the prisoner of being concerned in an affray in which Mungul Sirdar was killed and others wounded, and sentenced him to five (5) years' imprisonment with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr W. B. Jackson).—"I see no reason to interfere with the sentence passed on the prisoner Pultoo."

PRESENT:

W. B. JACKSON, ESQ., *Judge*.

GOVERNMENT

versus

JOYRAM KANSAREE.

1852. May 15. Case of JOYRAM KANSAREE.

A mitigated sentence of three years' imprisonment with labor in irons was passed upon the prisoner convicted of forging *pice*.

CRIME CHARGED.—1st count, forgery in counterfeiting coin; and 2nd count, having in his possession implements and materials for casting and counterfeiting metal plates in imitation of pice, also stamped coins.

Committing Officer, Mr. S. Wauchope, magistrate of Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly.

Remarks by the additional sessions judge.—"The prisoner is a brazier living in the village of Peramhoa. A neighbour saw him making preparations to cast counterfeit coin, and went to the thannah with a neighbouring phareedar to give information of the circumstance. They met the darogah about a *coss* from the village, and a burkundauz was sent to apprehend the prisoner. The darogah also soon after arrived and the house was searched. In it were found three earthen moulds ready for receiving the melted metal. Each would have formed about twelve pice. There was also dross showing that he had made at least four previous castings, also several forged pice. The prisoner is said to have confessed his guilt before the darogah, but there is only one witness to prove it. I find the prisoner guilty of the first charge on violent presumption, and have sentenced him to imprisonment with labor in irons for seven (7) years, but as for forging pice, a reduced punishment has generally been passed by the higher court, and there are no aggravated features in this case, I consider it my duty to propose that the period of imprisonment be reduced from seven (7) to three (3) years."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I convict the prisoner, and sentence him, Joyram, to imprisonment for three (3) years, as recommended by the sessions judge."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

HURDYAL SINGH.

versus

SHEIKH SHOODHUN (No. 1), SHEIKH LOYROBEEAH (No. 2), SHEIKH MUNSHOOR (No. 3), SHEIKH LOODEEAH (No. 4), SHEIKH JEHANGEER (No. 5) AND DOOLARAM DEB (No. 6).

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Case of SHEIKH SHOODHUN and others.

The sentence passed upon one of the prisoners was reduced in consequence of his not having taken an active part in the assault on the deceased. The sessions judge's orders regarding the others were confirmed.

CRIME CHARGED.—1st count, wilful murder of Kullean Singh; and 2nd count, being accomplices and accessaries before and after the fact to the above crime.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. R. C. Raikes, magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 2nd March 1852.

Remarks by the sessions judge.—"From the evidence of the prosecutor and others, it appears that the deceased, when formerly residing at the same village, had lent some money to prisoner No. 2, and coming to realize it, put up with him, and seeing No. 2 passing by, demanded payment, and on excuses being made seized and kept him there till morning. His brother No. 1, hearing of this, went and complained to Nos. 7 and 8 (acquitted) whose ryots they are, and asked his interference to settle the matter, and No. 7 desired that No. 2 and deceased should be sent for next morning, and he would endeavour to settle the matter. Early next morning Nos. 1 and 6 went to deceased and said Nos. 7 and 8 had called him to settle the dispute. Accordingly he, No. 2, and prosecutor went there, and some dispute arising about interest, all the prisoners attacked the deceased with *lattees*, from the effects of which he died there that night: and the evidence of the civil surgeon shows that he had received, besides a fracture of the skull which caused his death, three blows on the forehead, and two severe ones on the thighs, and slighter ones on the left side of the chest. The defence was—of No. 1, that the deceased had knocked him down senseless; No. 2, that he had been seized and imprisoned by the deceased, and next morning, having been sent for by No. 7 to settle, he, deceased, and prosecutor went to his house, when disputes arising, and deceased and prosecutor taking up *lattees*, he ran away. Nos. 3, 4 and 5, that they had been falsely charged; No. 6, that deceased and No. 1 quarrelled and he put a stop to it. None of the prisoners adduced any witness in proof of their defence. The *futwa* of the

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law officer convicts them of culpable homicide, in which I concurred, and have passed a severer sentence than I should otherwise have done, as a premeditation to assault the deaceased appears from the circumstance of the prisoners having been collected at No. 7's house armed with *lattees*."

Sentence passed by the lower court, Nos. 1 to 6, each five (5) years' imprisonment with labor, without irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed, resting their case on the worthlessness of the evidence for the prosecution. I see no reason to distrust the evidence, but the conduct of the deceased and the prosecutor was overbearing and exasperating. They illegally detained the prisoner No. 2 for debt the whole night, and in the quarrel which ensued the next morning in settling the matter, the complainant first struck the prisoner No. 1 with a club; Doolaram then interfered, and pushed the complainant and the deceased out of the house into the court-yard, when all the prisoners attacked the deceased, and severely beat him, the prisoner No. 1 first felling him to the ground with a blow from a club. The conviction appears to me proper, but I reduce the sentence passed on prisoner No. 2, who did not take an active part in the assault, and was the aggrieved party, to three (3) years' imprisonment with labor, if not redeemed by payment of a fine of fifty (50) rupees. I confirm the sentences passed on the other prisoners."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GHOLAM KULENDUR

versus

ATTOO CHUNG (No. 1, APPELLANT), SANAOOLLAH (No. 2), JHOOMER SHEIKH (No. 3), GOLUCK CHUNG (No. 4, APPELLANT), ALLUM MUNDUL (No. 5) AND BESHMONEE KUSBEE (No. 6).

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Case of ATTOO CHUNG, GOLUCK CHUNG, (appellants) and others.

The Nizamut Adawlut held that the witnesses to the Mofussil confessions of the prisoners should have been examined, for although those for the defence might not prove anything in the prisoner's favor, it could not be anticipated what their evidence would establish.

CRIME CHARGED.—1st count, Nos. 1 to 4, burglary in the house of Gholam Kulendur, the prosecutor; and 2nd count, Nos. 1 to 6, knowingly receiving property stolen in the said burglary.

CRIME ESTABLISHED.—Knowingly receiving property stolen in a burglary.

Committing Officer, Mr. A. Littledale, magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 21st January 1852.

Remarks by the sessions judge.—"This was a heavy burglary, committed in the house of the nazir of the moonsiff of Dhoobulhattee, and who was the prosecutor. A considerable quantity of the property recovered was either found or traced to the prisoners. No. 2 was his servant, and No. 6, the sister of No. 2, and a prostitute, who in the most barefaced way, in her defence, stated that what was found in her house, articles numbered twenty-four and twenty-five, had been given to her by the prosecutor in return for favors shown, and because she had refused to continue the *liaison*, she had been implicated by him in the theft. The *futwa* convicts the prisoners of knowingly receiving stolen property only, and though there can be little doubt all the male prisoners were concerned in the robbery, I have, in concurrence with the *futwa*, convicted them all of the knowing receipt, and sentenced them as stated in the proper column, enhancing the punishment of No. 2, as he was the prosecutor's servant at the time, and by receiving the stolen property became an accessary after the fact to the robbery of his master. A chowkeedar was also committed, but owing to the absence of witnesses to his defence, the case as regards him was unavoidably postponed."

Sentence passed by the lower court.—Nos. 1, 3, 4 and 5, three (3) years' imprisonment, with labor in irons, No. 2, four (4) years' imprisonment with labor and irons, and No. 6, one (1) year's imprisonment, with labor suited to her sex.

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law officer convicts them of culpable homicide, in which I concurred, and have passed a severer sentence than I should otherwise have done, as a premeditation to assault the deaceased appears from the circumstance of the prisoners having been collected at No. 7's house armed with *lattees*."

Sentence passed by the lower court, Nos. 1 to 6, each five (5) years' imprisonment with labor, without irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed, resting their case on the worthlessness of the evidence for the prosecution. I see no reason to distrust the evidence, but the conduct of the deceased and the prosecutor was overbearing and exasperating. They illegally detained the prisoner No. 2 for debt the whole night, and in the quarrel which ensued the next morning in settling the matter, the complainant first struck the prisoner No. 1 with a club; Doolaram then interfered, and pushed the complainant and the deceased out of the house into the court-yard, when all the prisoners attacked the deceased, and severely beat him, the prisoner No. 1 first felling him to the ground with a blow from a club. The conviction appears to me proper, but I reduce the sentence passed on prisoner No. 2, who did not take an active part in the assault, and was the aggrieved party, to three (3) years' imprisonment with labor, if not redeemed by payment of a fine of fifty (50) rupees. I confirm the sentences passed on the other prisoners."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GHOLAM KULENDUR

versus

ATTOO CHUNG (No. 1, APPELLANT), SANAOOLLAH (No. 2), JHOOMER SHEIKH (No. 3), GOLUCK CHUNG (No. 4, APPELLANT), ALLUM MUNDUL (No. 5) AND BESHMONEE KUSBEE (No. 6).

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Case of ATTOO CHUNG, GOLUCK CHUNG, (appellants) and others.

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CRIME CHARGED.—1st count, Nos. 1 to 4, burglary in the house of Gholam Kulendur, the prosecutor; and 2nd count, Nos. 1 to 6, knowingly receiving property stolen in the said burglary.

CRIME ESTABLISHED.—Knowingly receiving property stolen in a burglary.

Committing Officer, Mr. A. Littledale, magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 21st January 1852.

Remarks by the sessions judge.—"This was a heavy burglary, committed in the house of the nazir of the moonsiff of Dhoobulhattee, and who was the prosecutor. A considerable quantity of the property recovered was either found or traced to the prisoners. No. 2 was his servant, and No. 6, the sister of No. 2, and a prostitute, who in the most barefaced way, in her defence, stated that what was found in her house, articles numbered twenty-four and twenty-five, had been given to her by the prosecutor in return for favors shown, and because she had refused to continue the *liaison*, she had been implicated by him in the theft. The *futwa* convicts the prisoners of knowingly receiving stolen property only, and though there can be little doubt all the male prisoners were concerned in the robbery, I have, in concurrence with the *futwa*, convicted them all of the knowing receipt, and sentenced them as stated in the proper column, enhancing the punishment of No. 2, as he was the prosecutor's servant at the time, and by receiving the stolen property became an accessary after the fact to the robbery of his master. A chowkeedar was also committed, but owing to the absence of witnesses to his defence, the case as regards him was unavoidably postponed."

Sentence passed by the lower court.—Nos. 1, 3, 4 and 5, three (3) years' imprisonment, with labor in irons, No. 2, four (4) years' imprisonment with labor and irons, and No. 6, one (1) year's imprisonment, with labor suited to her sex.

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Case of ATTOO CHUNG GOLUCK CHUNG, (appellants) and others.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—" Seven prisoners were convicted in this case by the sessions judge; two only, Nos. 1 and 4, Attoo and Goluck, have appealed.

" On the first inquiry into the burglary made by the police, they reported that they were unable to detect the offenders who had committed it, and reported to that effect.

" The magistrate directed a further investigation, and the prisoners were made over to the sessions.

" Both the prisoners who have appealed against the sentence passed on them, are said to have confessed in the Mofussil, and the names of the witnesses who attested their confessions are in the calendar. The sessions judge, in concurrence with the law officer, thought it unnecessary to examine them on this point.

" The prisoners in defence claim the property found on them as their own, but their witnesses state they know nothing about the matter. It thus turns out that the evidence to the confessions is not absolutely called for, but as all the evidence for the prosecution should be taken, so far as that can be done before the prisoners are required to defend themselves, and it could not possibly be known what might be the result of the examination as to the ownership of the property found on the prisoners, the sessions judge should have examined the witnesses to the Mofussil confessions of the prisoners. The case does not happen to turn, however, on the integrity of the prisoners' answers. Their conviction rests on the finding of property on them sworn to by the prosecutor, which property the evidence for the prisoners are unable to speak to.

" I confirm the sessions judge's sentence."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

MOOKTARAM CHATTERJEA

versus

SOOKROOLLAH SHEIKH (No. 1), MIRUN SHEIKH (No. 2) AND JHALOO JOLLA, (No. 5).

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Case of SOOKROOLLAH SHEIKH and others.

The Nizamut Adawlut confirmed the finding and sentence of the sessions judge.

CRIME CHARGED.—Nos. 1, 2 and 5, 1st count, dacoity attended with *torture by burning the prosecutor with a lighted torch*, committed in his house on the night of the 29th October 1851, or 13th Kartick 1258 B. S., from whence property, valued at rupees 479-5, was plundered ; 2nd count, accomplices in the above-mentioned dacoity, and 3rd count, knowingly receiving and concealing property acquired by committing the above-mentioned dacoity ; and No. 1, 4th count, accessary after the fact to the above-mentioned dacoity and 5th count, privity to the above-mentioned dacoity.

CRIME ESTABLISHED.—No. 2, dacoity attended with torture by burning the prosecutor, and of knowingly receiving and concealing property acquired by dacoity, and Nos. 1 and 5, knowingly receiving and concealing property acquired by dacoity.

Committing officer, Mr. G. A. Pepper, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 1st March 1852.

Remarks by the officiating sessions judge.—" The prosecutor's house was attacked by some 20 or 25 dacoits on the night of 13th Kartick, or 29th October 1851, property to the value of rupees 479-5-0, was plundered, and he himself was burnt under the arm in such a part that it could scarcely have been done by accident. The dacoits were seen issuing forth from the prosecutor's premises armed with different weapons and with torches and with their faces partially disguised ; none of them were recognised.

" The prisoners Nos. 1 and 2 were apprehended on the suspicion of the prosecutor. Prisoner No. 2 confessed, both in the Mofussil and before the magistrate, to having been a reluctant party to the crime. He gave a circumstantial account of their proceedings, described the place where the gang assembled and the road they took to the village of the prosecutor, and admitted that he carried away the stick, No. 7, which, with two other articles of plundered property, was afterwards found in his house. He also stated that on their way back from the dacoity he was told by one of his companions that Heera Dome had burnt the prosecutor. He further implicated prisoner No. 1 as a sirdar. Prisoner No. 1 denied all knowledge of the dacoity, but acknow-

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ledged having purchased a cloth from prisoner No. 2, which he was subsequently warned to conceal, and which he was detected by the police in the very act of burning. Two other articles of the plundered property were also discovered in his house.

"Prisoner No. 5 was apprehended whilst running with a bundle under his arm. It would appear from his answers in the Mofussil and before the magistrate, that he had purchased a piece of cloth from prisoner No. 1, and that, as he was returning from witnessing a procession with it on his person, he was cautioned to conceal it, and that he took it off, put it under his arm and hastened away, when he was seized by Jeto Chowkeedar.

"The witnesses on the part of the prosecution have most satisfactorily proved the property found on the prisoners to have belonged to the prosecutor. The stick No. 7 is the only article not named in the list of things plundered, delivered in by the prosecutor to the police on the first occurrence of the dacoity. The prisoner No. 1 rested his defence in this court on the fact, that the property found in his house belonged partly to him and partly to one Gopee, widow. Prisoner No. 2 stated that Kanye Chowkeedar placed the property, Nos. 5, 6 and 7, in his house, and prisoner No. 5 stated that he had bought the cloth which was found on him when apprehended.

"I am of opinion that the evidence for the defence in no way exculpates these prisoners.

"I convict prisoners Nos. 1 and 5 of knowingly receiving and concealing property acquired by dacoity, and prisoner No. 2, of the crime of dacoity attended with torture by burning the prosecutor, and of knowingly receiving and concealing property acquired by dacoity, and sentence prisoner No. 1 to seven (7) years' imprisonment, prisoner No. 5, to five (5) years' imprisonment, and prisoner No. 2, to fourteen (14) years' imprisonment, all with labor."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on prisoners Sookroollah, Mirun and Jhaloo."

PRESENT:

W. B. JACKSON, Esq., *Judge*.

GOVERNMENT

versus

SHEIKH SULEEM.

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Case of SHEIKH SULEEM.

The prisoner, who killed his brother, was held to have committed the act, while in a state of temporary derangement under an approaching attack of epilepsy.

CRIME CHARGED.—Wilful murder of Shumsherooddeen.

Committing Officer, Mr. H. C. Halkett, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 26th April 1852.

Remarks by the officiating sessions judge.—"The prisoner, who is about 22 years of age, confessed the crime laid to his charge in the Mofussil and before the magistrate, and denied it in this court.

"Witness No. 1, Ushkuroollah, deposes that on a Thursday, in the month of Magh last, he and Dowlut and Purusullah were fishing in the khal to the north of the house in which the defendant lived, when suddenly they heard Pyealee, the mother of the prisoner, call out that a murder had been committed. They went immediately towards the prisoner's house to see who had been killed, and whilst proceeding there they saw prisoner Suleem running away, and seizing him found his hands covered with blood. On asking him what had happened, prisoner replied, that his brother Shumsher was continually beating and abusing him, and that in consequence he had struck him with a *dâo*. They therefore held him fast and took him into his *baree*, where they saw the deceased Shumsherooddeen lying wounded in the space between the houses, and that he had a wound on the right side of the neck twelve fingers in length and little less than one inch in breadth; the depth they could not tell; and on his head another wound three fingers long and little less than one inch broad, from which wounds a great quantity of blood had flowed. On inquiry the wounded man said that he had told the prisoner to put away some rice that he had been measuring out, when prisoner instead of doing so wounded him as above described. They then bound the prisoner and went to fetch a chowkeedar, with whom they all proceeded to the thanna darogah, who happened to be in a place called Shinjore. That the deceased gave his deposition the same day before the darogah, and shortly after, about 8 in the evening, died from the effects of the wounds he had received, and his body was sent into the sudder station. The witness further states that the prisoner and the deceased were brothers and lived together, and the prisoner suffering from frequent fits of epilepsy was unable to work, and the

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deceased was constantly beating and abusing him in consequence; and that he is of opinion that this is the reason why he wounded the deceased; that he saw a *dáo* on the ground by the wounded man stained with blood, and he said that it was with that he had been wounded; that the deceased was about 25 years of age. Witness has no suspicion that there was any intimacy between the prisoner and the wife of the deceased, or any other cause for the attack than the one before mentioned; that he has frequently seen the prisoner in fits of epilepsy when he fell upon the ground and remained insensible for about half an hour; and although the prisoner is unable to work in consequence of these attacks, he is perfectly sane at other times, and is so considered by all. When prisoner was being taken to the darogah he was attacked with a fit in the boat and remained insensible for half an hour. The mother of the deceased, Musst. Pyealee, witness No. 10, deposes that on the day of the occurrence her elder son, Shumsherooddeen, deceased, was measuring out rice, and her younger son, the prisoner Suleem, sitting at a little distance from him cutting a bamboo with a *dáo;* that Shumsherooddeen called to him to put away the rice measured, which he said he would not do, because he had beaten him so severely before that he could not rise for the pain about his waist; that then deceased abused the prisoner, and asked him how he was to live if he would not work, and how it was possible deceased alone could work for all. He then told witness to put away the *dhan*, and she proceeded to do so; when suddenly she heard the deceased call out, and turning round saw that he was wounded and blood was streaming from his neck, which he had clasped with his hand, and on going up to him saw the wounds. This witness further deposes that the prisoner has continually suffered from fits of epilepsy since he was six years old, and that exposure to the sun brings them on, in consequence of which he cannot do any out-of-door work. The above evidence is corroborated by all the other witnesses.

"The uncovenanted assistant surgeon deposes that he 'examined the body of Shumsherooddeen, deceased, and found a 'wound extending from the pole of the head to the angle of the 'jaw, a space of about five inches, which penetrated to the cervi- 'cal vertibræ; that all the important vessels and nerves in that 'important region were divided, and consequently that a speedy 'death must have ensued; that there were no wounds of 'importance on any other part of the body; that all the internal 'viscera were perfectly sound and healthy; and that the wound 'alone above described was the cause of death; that the wound 'was inflicted by a sharp cutting instrument, probably a large '*dáo* like the one now shown to him.' This *dáo*, which is identified by the witnesses, is stained with blood, and weighs 10 chittacks. The uncovenanted assistant surgeon, on being further

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examined before me as to the state of mind of the prisoner Suleem, states that 'he thinks him sane; that he was subject 'to epileptic fits when in the jail hospital; that he, the prisoner, 'came into the hospital on the 9th February with dyspepsia, 'and was discharged cured about the 21st idem; that he 'returned to the hospital on the 29th idem maniacal from 'epilepsy; and that it is reported to him that he had epileptic 'fits daily; that during the intervals of the fits he appears 'to be perfectly sane and accountable for his actions to a certain 'extent, but not to the same extent as an ordinary man.'

"Two of the jury gave a verdict of culpable homicide on account of the frequent attacks of epilepsy to which the prisoner is subject, which they consider affect his mind more or less at all times. The third juryman convicted the prisoner of the wilful murder of Shumsherooddeen as charged in the calendar, in which opinion I concur; for it is shown in evidence that at the time the prisoner attacked the deceased and inflicted upon him the wounds from which he died he was perfectly conscious of what he was doing; that his passions were excited by the abuse of his brother and that he sought to revenge himself for the injuries he thought that he had received; and that when he had done so he fled. I think that under the peculiar circumstances of this case, the ends of justice will be satisfied by sentencing the defendant Suleem to imprisonment for life."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The prisoner Suleem is charged with murdering his own brother Shumsherooddeen. The evidence goes to prove that the two were together; deceased was weighing rice, and ordered prisoner, who was cutting a stick with a *dáo*, to carry away the rice. Prisoner said I am in so much pain from the beating you gave me, that I cannot do so. Deceased then abused the prisoner for not working, and prisoner with the *dáo* in his hand struck him over the head and neck and cut him down. Prisoner then ran out; but several neighbours met him coming out of the house, and seeing him in an excited state, apprehended him. They found blood on his clothes; and he admitted that he had cut down his brother on account of the ill-treatment he had received from him. The deceased died the same night. There can be no doubt that the prisoner committed the act with which he is charged. It appears, however, from the evidence of his neighbours, that the prisoner has been epileptic from childhood. His mother, who has given her evidence in a very intelligent manner, says that he is continually suffering from epileptic fits; that he becomes worse if exposed to the sun; that he is rather deaf: the deceased used to beat the prisoner for not working, and had some days before beaten him with a stick of maudar-wood (a thorny tree). Another witness says there

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were then marks of the beating on the prisoner's arms and back, The mother adds, she never saw the prisoner before raise his hand against his brother, though the brother often beat him; and she believes his mind must have been deranged when he struck him in this instance. It is also in evidence that immediately after the occurrence, when the prisoner was stopped by the neighbours and brought in, he fell down in a fit. This is a most important feature in the case, as showing that the fit was coming on at the time he committed the act. In the jail it seems the prisoner was subject to fits almost daily. The surgeon deposes that in the intervals he was not insane, but he adds that to a certain extent he considers him accountable for his actions: he was not so to the same extent as other men. It is difficult to define a limited responsibility of this description, though undoubtedly the continual occurrence of epileptic fits does weaken the intellect, and in the same degree the power of a man to control his own feelings and actions. In this case it is plain the accused is subject to continual fits of epilepsy: that he committed the act when one of these fits was coming on, and that his mother, the mother also of deceased, thinks he was not sane at the time. It is further to be considered that prisoner was in the habit of receiving ill-treatment from deceased on account of his natural infirmity, and was suffering from such ill-treatment at the time he committed the act. This would have been matter of extenuation in a sane person. On the whole I consider the act to have been committed by the prisoner Suleem when in a state of temporary derangement of mind: I therefore acquit him of the charge. The case will be reported to the Government under Act IV. of 1849, for orders as to the disposal of the prisoner."

PRESENT :

J. R. COLVIN, Esq., *Judge*.

GOVERNMENT

versus

SHEIKH GOLAM ALEE.

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Case of SHEIKH GOLAM ALEE.

Cruelty to animals causing, though not intended to cause, their death, and though without any proved malicious intent towards their owner, is an offence under the Mahomedan law, punishable by *tazeer*. Sentence by a sessions court, of six months' imprisonment, without irons, and 20 rupees fine, upheld, on a conviction for the above offence, by the Nizamut Adawlut.

CRIME CHARGED.—Gross cruelty, and wanton destruction of the property of his employers, in having, on the 14th February 1852, being a commissary driver in charge of a certain commissariat bullock, wickedly and maliciously thrust a bamboo stick up the anus of the said bullock, and thereby caused several lacerated wounds within the rectum and about the anus, which resulted in the death of the bullock.

CRIME ESTABLISHED.—Gross cruelty, and destruction of the property of his employers, in having, being a commissary driver in charge of a certain commissariat bullock, wickedly thrust a bamboo stick up the anus of the said bullock, and thereby caused several lacerated wounds within the rectum and about the anus which resulted in the death of the bullock.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 15th March 1852.

Remarks by the additional sessions judge.—"The prisoner was sent with a cart and a pair of bullocks to Dum-Dum. There was the usual load of 15 maunds weight on the cart. When he arrived near Dum-Dum one of the bullocks lay down. It was then night, and the prisoner ill-used the animal for a quarter of an hour, when the men who were with him left him, and caused another bullock to be sent to his help. The bullock came back behind the cart and died the next day in the city of Calcutta. It was found to have five wounds through the skin of the rectum, through any one of which the bamboo used by the prisoner as a goad might have passed. The prisoner thrust the animal repeatedly about the anus, but as it was night, the particulars of his conduct could not have been well observed. There were two witnesses to the fact; but one of them had gone to Rangoon, and his absence was unavoidable. His evidence given before the magistrate was proved in accordance with Circular Order No. 42, of volume III. The circumstantial evidence however supporting the deposition of the other man would have been sufficient for conviction, as the prisoner allowed that he beat the animal although only in the usual manner. The man's cruelty was very great; but there is no reason to believe that he intended to destroy the bullock; and I think that the magistrate might have disposed of the case.

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Case of Sheikh Golam Alee.

Sentence passed by the lower court.—Six (6) months' imprisonment without irons, and a fine of rupees twenty (20), or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"These papers were sent for in order to its being ascertained, by a reference to the law officer of the Nizamut Adawlut, whether cruelty to animals, causing, though not intended to cause, their death, and though without any proved malicious intent towards their owner, is an offence under the Mahomedan law, and if so, under what head punishable. The *futwa** of the law officer states that it *is* an offence punishable under the general head of *tazeer*.

"The cruelty in this case was very gross, and I see no ground for interfering with the conviction or sentence."

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* The following was the *futwa* delivered by the law officer:

هلاک کردن گاو بداخل کردن چوب در مقعدِ آن از قساوت جرم است
و اینقسم حرکت بجهت خلاف شرع بودن آن موجب تعزیر است
مفوض برای حاکم و بر هلاک کنندهٔ ادای قیمت آن گاو برای مالک
لازم والله اعلم بالصواب المرقوم سیزدهم ماه می سنه ۱۸۵۲ ع

فضل الرحمن

فضل الرحمن قاضی صدر کلکته

PRESENT:

SIR R. BARLOW, BART., *Judge.*

ABDOOL SHEIKH

versus

DINOO GHOSE.

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May 15.

Case of DINOO GHOSE.

There being no reason to distrust the evidence for the prosecution, the sentence passed upon the prisoner, convicted of highway-robbery, was upheld on appeal.

CRIME CHARGED.—Beating and committing a highway-robbery upon the prosecutor, in which cloth and pice to the amount of Company's Rupees 16-3-3 was plundered.

CRIME ESTABLISHED.—Highway-robbery.

Committing Officer, Mr. A. Hope, assistant with the powers of joint magistrate, Santipore, Nuddea.

Tried before Mr. E. Bentall, additional sessions judge of Nuddea, on the 5th March 1852.

Remarks by the additional sessions judge.—"A number of men were returning together from Phulea *haut* to Santipore, and as they passed the Pumlea factory, which is about one-eighth of a *coss* from the *haut*, the prosecutor, who was one of them, was attacked by three men, one of whom, *viz.*, the prisoner, struck him with a *lattee*, and the other two made off with a bundle of cloth which he was carrying. The men had to pass by the thanna on their way home, and they stopped there and accused the prisoner. The darogah went to the prisoner's house and apprehended him that same night and took the above said men with him. Four of the men say that they recognized the prisoner. He lives a quarter of a *coss* from the scene of crime. His defence was, that at that time he was grazing cattle in a plain, and he brought three witnesses to say so. It was on the 7th day of the moon, and the man could easily have been recognized; and owing to the want of delay in making the accusation and the circumstance of the witnesses going back that night to see the prisoner apprehended, I believe that he was recognized by one or more of the men who were with the prosecutor, and that they all at the time believed that the prisoner was one of the robbers. I convict him on the circumstances of the case; but as the witnesses had known the prisoner only for a short time, and by meeting him at the *haut*, I cannot say that I believe that all and each of them did recognize the prisoner."

Sentence passed by the lower court.—Seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prosecutor and those on the road, returning in company with him from the *haut*, knew the prisoner's person previously and had seen him that day at the *haut*. They gave

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information of the assault and robbery immediately at the thanna, when the police proceeded to the prisoner's house and apprehended him. There was no time to get up a story against him; the moon was up and the prisoner was recognized by its light. The offence was committed under circumstances which give it much aggravation. I see no reason to doubt the truth of the statements made by the prosecutor and his witnesses. The evidence to the defence, giving it every weight, is at the best but negative; it by no means establishes positively that the prisoner was at Ghazeepore as alleged at the time of the assault."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

HURSUNKUR MOZOOMDAR

versus

NOBOKOOMAR MOZOOMDAR (No. 9), JADUB COONDOO (No. 10) AND RAMNARAIN ROY (No. 11).

1852. May 21. Case of Nobokoomar Mozoomdar and others.

One prisoner convicted of embezzlement and two of privity thereto, released on appeal, in consequence of suspicions with respect to the truth of the charge, and because the prosecutor's statement showed that he had never demanded the return of the property alleged to have been embezzled.

Crime Charged.—1st count, embezzlement of property belonging to Kaleesunker Mozoomdar, deceased, brother of the prosecutor, to the estimated amount of rupees 1,356; 2nd count, theft of property to the aforesaid value belonging to the said deceased; and 3rd count, Nos. 9 and 10, having in their possession a portion of the aforesaid property.

Crime Established.—No. 10, embezzlement, and Nos. 9 and 11, privity to the embezzlement after the fact.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 31st March 1852.

Remarks by the sessions judge.—" On the 14th Kartick 1258, the prosecutor's cousin, Kalee Sunkur Mozoomdar, being very ill, went in a *dooly* from his house at Bungseebatty to Rughoonathgunge to pass the rest of his days on the banks of the Ganges. He had with him property in jewels, cash, and various household articles, and was accompanied by Ramnarain Roy, Jadub Coondoo, and Ramanund Mookerjea. On the night of the 10th Kartick 1258 B. S., Kalee Sunker Mozoomdar expired. Jadub Coondoo in concert with others took all the property of the deceased and returned to his village. The prosecutor at the time was in the district of Malda. On his return, hearing of this transaction, he lodged a complaint at the thanna, and the prisoners were arrested. They denied the charge. The investigation of the thanna moonshee was very loose and unsatisfactory; and he reported to the magistrate that the case was not

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proved. It was not until the case came before the magistrate, and the prisoners were put on their defence, that Jadub Coondoo stated that a portion of the property was with him, which he offered to give to the wife of the deceased, but she declined to take it. A search was then instituted, and in the prosecution of further inquiries, part of the property of the deceased was pointed out by the wife and the mother-in-law of Jadub Coondoo in the houses of the different people. Some of it in the house of Nubokoomar Muzoomdar. The property found was worth rupees 16-11-10. The property said to have been appropriated was valued at rupees 1,356, but this was probably an exaggerated valuation. The jurors acquitted all but Jadub Coondoo, whom they convicted of embezzlement. It was proved that he had taken property of the deceased to the amount of rupees 16-11-0, and there was strong presumptive evidence that he had appropriated, and allowed others to appropriate, the greater portion of his property. I considered the evidence sufficient to convict the prisoners Nubokoomar Mozoomdar and Ramnarain Roy of privity to the embezzlement, and passed sentence on them all, as stated in the proper column."

Sentence passed by the lower court. One (1) year's imprisonment without irons, and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"Kaleesunker Mozoomdar, deceased, it is averred by the prosecutor, his nephew, was taken to the Ganges by the prisoners and died there two days afterwards. It is stated by the prosecutor also that the deceased took with him rupees 900 in cash, rupees 400 worth of ornaments and 3 maunds of brass utensils. The prosecutor was at Malda at the time, and on his return home he charged the prisoners with murdering the deceased, and making away with the above property. The charge of murder fell to the ground, and indeed was relinquished by the prosecutor in the more advanced stages of the proceedings, but the prisoners were put on their trial for embezzlement of the above property. One of them, Jadub, was convicted of embezzlement, and two others, in opposition to the opinion of the jury, of privity thereto. It is highly improbable that a person in expectation of his end being near, as the fact of his being taken down to the river side plainly indicates was the case, would have taken with him rupees 900 in cash and rupees 400 worth of ornaments. The evidence adduced to prove this fact is suspicious. Three witnesses state that they had pawned ornaments to the deceased, and hearing that he was going down to the Ganges went to redeem them; one of them further states that the deceased said that he was taking rupees 900 in cash and rupees 400 in ornaments with him, and two that they saw a bag of money (about rupees 900) put upon the deceased's cot, and a bundle of ornaments carried by prisoner Jadub.

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"Several other witnesses say that they were present when the offer to redeem the pawned ornaments was made, and saw the deceased take cash and property with him.

"Had the deceased been a jealous old miser, who could not suffer himself to be parted from his treasures even *in articulo mortis*, it is not probable that he would have paraded them in the presence of so many persons, thereby manifestly incurring the risk of being robbed.

"I accept as a much more probable version of the affair that told by the prisoner Jadub, who was the servant of the deceased. It is that the deceased only took with him rupees 7 in silver and a few brass utensils; that the money was expended in the funeral obsequies, and that he brought the latter home with him, and on offering them to prosecutor's wife she told him to keep them until the prosecutor returned from Malda. He admits that he also had charge of three cows, two of which deceased gave to Nubokoomar Mozoomdar, another of the prisoners.

"This is not at all unlikely. Nubokoomar was the attendant upon the deceased in his last illness.

"The prosecutor appears on his return from Malda at once to have charged the prisoners with murder and embezzlement, and Jadub being arrested on that charge, it is not inconsistent with his innocence that his wife should have placed the property in other persons' houses for fear the discovery of it in his own might be made use of in support of the charge against her husband. The prosecutor has not in any of his depositions averred that he asked the prisoners for the property of the deceased. Until he had done this, and the return of it had been refused without satisfactory explanation, he had no sufficient ground for preferring a charge of embezzlement. His addition to it of a false accusation of murder betokens a malicious spirit. Altogether, I think that, to say the least of it, the prosecution bears a very suspicious appearance, and I cannot affirm the conviction and sentence which has been passed. The prisoners will be released.

"I note, for the information of the magistrate, that it has been held that in a charge under Section VIII., Act XIII. of 1850, the person or persons for whom the property was held in trust, or, in other words, the nature of the trust, should be specified."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

BINDOO BYSTUMEE

versus

RAM BAGDEE (No. 1), KOREBON ALEE SHEIKH (No. 2), PUDDO KHANGY (No. 3) AND SHAMA KHANGY (No. 4).

1852. May 21.

Case of RAM BAGDEE and others.

Charge, abduction of a girl eight years' old, for the purpose of making her a prostitute, or for other illegal purpose. Sentence, three years' imprisonment with fine commutable to labor, confirmed in appeal.

CRIME CHARGED.—1st count, theft of prosecutrix's daughter, Kamini Chookree, aged eight years, for the purpose of making a prostitute of her, or for other illegal purpose; 2nd count, accomplices in the aforesaid crime.

CRIME ESTABLISHED.—Abduction of prosecutrix's daughter Kamini Chookree, aged eight years, for the purpose of making a prostitute of her, or for other illegal purpose.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 29th March 1852.

Remarks by the additional sessions judge.—"The prosecutrix, Bindoo Bystumee, lives near the police pharee at Bhowanipore. It is not shown who the prisoner No. 1 is, or where he lives, No. 2 is a picture painter, and lives a few *beegahs* from the prosecutrix; Nos. 3 and 4 are sisters and live together, near the house of the prosecutrix, who states, that her daughter Kamini, who is eight or nine years old, went out to play, and another child told her (Bindoo) that two men and two women had carried off her daughter in a *garee*. She followed after them and told a policeman, witness No. 2, who also followed, and told another policeman, witness No. 3, who saw an empty *garee* near a wine-shop, and found the four prisoners and the lost child in a house by the side of the road near Circular Road, two or three miles from the house of the mother of the child. The prisoner No. 1 states in his defence, that he went to the place where he was apprehended, which he says belongs to a sister of Shama, in company with Shama, with whom he is intimate. No. 2 states, that, as the others were going to Calcutta in a *garee*, he agreed to go with them, and as the child asked to go they took her up. Nos. 3 and 4 state, that they were going in a *garee* and took the child with them at her own request, and that she often comes to their house to play. Considering that two of the prisoners are prostitutes, and that they all drove off together with the child against the consent, or even knowledge, of the child's mother, and were discovered at so great a distance from the mother's house, in Calcutta, and that the abduction of children

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by such people is by no means uncommon, I cannot but believe that the child Kamini, who is good looking and about eight or nine years of age, was taken off by the party, either with or without her own consent, *for the purpose of making her a prostitute*, or for some other illegal purpose."

Sentence passed by the lower court.—Each, three (3) years, imprisonment without irons and a fine, *viz.*, No. 2, of rupees one hundred (100) and Nos. 1, 3 and 4, of rupees fifty (50), or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" The prisoners have been represented in appeal by *mookhtar*. He pleads, that the child was in the habit of visiting the prisoners, and that she was not taken for any evil purpose. He can, however, point to nothing in the record but the prisoners' defence in support of this plea. The charge has been fully proved, and I see no reason to interfere with the sentence passed."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

MUSST. ALAH JELIE

versus

SHEODYAL CHOWKEEDAR.

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Case of SHEODYAL CHOWKEEDAR.

Charge, theft. Sentence four years' imprisonment with labor in irons passed on the prisoner who was a chowkeedar, confirmed in appeal.

CRIME CHARGED—1st count, theft of property valued at rupees 482; 2nd count, being an accessary before the fact; and 3rd count, privity.

CRIME ESTABLISHED.—Accomplice in theft of property, valued at rupees 482.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 5th March 1852.

Remarks by the sessions judge.—" The following is a short statement of the facts of this case:—The prosecutrix, who is a nautch girl, was returning home from some place where she had been dancing, &c., when she encamped with her people at a village called Poochree. No sooner had they encamped there, than the prisoner and another man came and made various inquiries as to what they had with them and then went away again; but about 8 or 9 o'clock, when two *ghurries* of the night passed, he (prisoner) returned alone and took up his quarters close to them for the night, and the party having placed a blanket over a *petarah*, containing all their valuables, made their beds upon three sides of it and placed a bag of rice upon the fourth side and then went to sleep. For some time all was quiet;

at last the prosecutrix was awakened by some person laying hold of a necklace she had round her neck, when she cried out and before he could get away the thief was taken by her people. This proved to be the prisoner; and search being then made, it was ascertained that the blanket had been cut open, and that the *petarah* and all its contents, and also the bag of rice, had been carried off, and though every search was made, no trace of them has since been found. The prosecutrix and her party all swear clearly to the fact of their having taken the prisoner in the act of pulling off her necklace; but he denies this, and says, that having been round to see that all was right, he was returning towards the prosecutrix's encampment, when he heard a cry of thieves, &c., and was at once seized and laid hold of by her people, and he calls two witnesses who speak in corroboration of this; but as the fact is clearly deposed to by the witnesses for the prosecution, and no cause whatever is assigned for the prisoner's being falsely accused, it seems impossible to doubt the truth of what they say, and under these circumstances, I have, in concurrence with the *futwa*, convicted and sentenced him as noted above."

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Case of SHEODYAL CHOWKEEDAR.

Sentence passed by the lower court.—Four (4) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The remarks of the sessions judge and the *futwa* indicate, that the prisoner has been convicted of being an accomplice in the theft charged, and that the word "accessary" used in the 10th column of the abstract statement, is a mistake, as has been noticed on a review of the statement.

"The prisoner has appealed, but has urged nothing sufficient to warrant interference with the conviction and sentence. The appeal is rejected."

PRESENT:

SIR R. BARLOW, BART., *Judge*.

JEEBUNRAM

versus

CHOOTUN SINGH (No. 1), DOMUN (No. 2) AND BHIKARY KHYREE (No. 3).

1852. May 21.

Case of CHOOTUN SINGH and others.

Appeal rejected as not having been presented within the proper time.

CRIME CHARGED.—Dacoity attended with wounding and plunder of property amounting in value to rupees 227-12-0.

CRIME ESTABLISHED.—Dacoity attended with wounding and plunder of property amounting in value to rupees 227-12-0.

Committing Officer, Captain T. Simpson, principal assistant to Governor General's agent, Hazareebaugh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebaugh, on the 12th November 1851.

Remarks by the deputy commissioner.—"On the night of Tuesday, the 23rd September, the prosecutor's house was entered by a gang of dacoits, said to have been sixteen or seventeen in number. They wounded prosecutor on the head with a sword, and in trying to save himself, his hands were wounded. Prosecutor then gave up rupees 200 in cash and a few silver ornaments, with which the parties decamped. The prosecutor in his statement on oath, taken by the police jemadar on the 24th September, said that the robbers had with them three torches, by the light of which he recognized the prisoners Domun and Chootun, and also one Budna, and Boyjoo Singh Thakoor and Khemun Singh Thakoor; by the last named of whom he was wounded. He further stated that one Ruttee had, on the day before the robbery, warned him to be on the watch; wherefore he suspected this Ruttee, but did not wish to have his house searched. On the 25th September ten witnesses were examined by the police jemadar. They said that on hearing the alarm they ran out and followed after the dacoits who were retreating; and they all agreed to having distinctly recognized the prisoners Domun and Chootun. Nine of them recognized the prisoner Bhikary. Before the principal assistant the prosecutor said that he had recognized the prisoner Domun and three others by their voices only, and not by sight. Of the ten witnesses, seven said they had recognized the three prisoners. One named Domun and Bhikary, omitting Chootun, whom he named before; one consistently named Domun and Chootun only, and one witness, Alakh, was not examined before the sessions court. The prosecutor, who is a feeble old man, gave uncertain evidence. Seven witnesses named the three prisoners. One constantly named Domun and Chootun only; one witness, Bisu, who had wavered before the principal assistant, broke

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down, and said he had recognized no one, and one, not examined by the assistant, named the three prisoners. In the evidence of these witnesses as regards other parties, there are several discrepancies; but they are not sufficient to render the evidence wholly unworthy of credit. A witness named Ruttee said that he had one morning accidently heard the prisoners Domun, Chootun, and Bhikary with another, who was acquitted by the assistant, say that Jeebun, the prosecutor, might look out: therefore Ruttee warned the prosecutor, but did not name any one to him.

"The defence of the prisoners is that they were at their homes on the night of the dacoity. This they have brought witnesses to prove, but the witnesses cannot prove it. Domun and Chootun were once before, in February 1846, taken up for dacoity, but were acquitted. This appears by their admissions and by the record sent up by the assistant. The jury find the prisoners 'guilty,' though in this case there is no evidence besides that of recognition. I cannot set aside statements that are consistent and for which no improper motives are discernable. The crime of dacoity is unhappily much on the increase and requires a strong check, therefore I sentence the prisoners to ten (10) years' imprisonment with hard labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoners were sentenced on the 12th November. A petition against their sentence was forwarded by dâk to the Nizamut Adawlut, and returned as irregular through the local authorities. A second petition, dated *9th March*, received through them, is now before the court, in which the prisoners state their first petition was dated the *9th of February*. It was transmitted to the court on the 13th idem. The prisoners, not having appealed within the prescribed period of three months, their appeal cannot now be heard."

"Ordered that the petition be rejected and the deputy commissioner's sentence be upheld."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

HURDYAL TEWAREE AND FOUR OTHERS

versus

BISHESHURDYAL, MOOKHTAR.

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Case of BISHESHURDYAL, MOOKHTAR.

The prisoner convicted of having received money in virtue of his employment as an agent, and of having misapplied it in breach of trust.

CRIME CHARGED.—Embezzlement of Company's rupees 1,310 belonging to the prosecutors, in having feloniously, contrary to the conditions laid down in a power of attorney, and contrary to his duty as an agent or *mookhtar*, embezzled the sum of Company's rupees 1,310, belonging to the prosecutors in part of the sum of Company's rupees 2,363-4-0 received by him from the treasury of the collector of Sarun, on account of the surplus sale proceeds of Mouza Dhurum Mugtah, Pergunnah Koaree, in virtue of the power of attorney, dated 15th January 1850, granted to him by Dilram Tewaree, Gujraj Tewaree, Casheeram Tewaree, Ruhul Tewaree, Keolaput Tewaree, Atmaram Tewaree, for self and as guardian of Bheekum Tewaree and Dookhee Tewaree, heirs of Anoop Tewaree, Pariag Dutt Tewaree, son and heir of Ruttoo Tewaree, Radhakishen Tewaree, younger brother and heir of Decharam Tewaree, and Ramnarain Tewaree, for self and as guardian of Surrubnarain Tewaree, heir of Ramanjoy Tewaree, the nine former proprietors of the said village; and 2nd count, theft of Company's rupees 1,310 in cash, the property of his clients, in that he was empowered, by a power of attorney on the part of the said Dilram Tewaree, &c., the nine former proprietors of Mouza Dhurum Mugtah, dated 15th January 1850, to receive from the treasury of the collector of Sarun, the sum of Company's rupees 2,363-4-0, the property of his clients, a part of which, *viz.*, Company's rupees 1,310, belonging to Hurdyal Tewaree, &c., the five prosecutors, contrary to the condition of the power of attorney, he fraudulently stole.

CRIME ESTABLISHED.—Embezzlement of Company's rupees 1,310, belonging to the prosecutors Hurdyal, Radhakishen Keolaput, Dilram and Neera Tewarees.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 9th February 1852.

Remarks by the sessions judge.—"This case was originally decided by my predecessor, Mr. Hathorn, on the 29th of September last; but being appealed to the Nizamut Adawlut, his proceedings were quashed by that tribuual, and instructions were given that the prisoner should be recommitted upon a charge properly framed, and this having been done, the case again came on for

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but trial at this station on the 6th ultimo. I annex a copy of the remarks made by Mr. Hathorn, in the criminal statements regarding this case; and I have only to observe, with reference to them, that as I quite concur in the view taken of it by that gentleman, and think with him that the prisoner has quite failed in proving the repayment of the money he pleads in defence, I have again sentenced him to the punishment awarded in the first instance, only so far modifying it as to direct that it shall commence from the date on which the sentence was originally passed, and not from that of the conclusion of the present trial.

" 'This is a clear case of embezzlement effected by a *mookhtar* 'upon several ignorant *maliks*, who live some fifty miles from 'the sudder station. Their estate Durwungta, in Pergunnah 'Kullenpore Kewaree, was sold on account of arrears of Govern-'ment revenue for the sum of Company's rupees 2,400. This 'occurred in January 1848. The arrears were trifling, as the 'amount excess sale proceeds due to the *maliks* (nine in number,) 'amounted to Company's rupees 2,363-4-0, as recorded in the 'collector's proceeding, dated 30th December 1850. The pri-'soner was subsequently appointed by the *maliks*, under a power 'of attorney, dated 15th January 1850, to receive the excess 'proceeds of sale on their behalf, the amount to each *malik* 'being about rupees 262. Five *maliks* out of nine prosecutors, '*viz.*, Hurdyal, Radhakishen, Keolaput, Dilram, and Neera. The 'remaining four (as the sequel will show,) have been bought 'over, or satisfied, and being in enmity with the rest, side with 'the prisoner, *viz.*, Cashee, Pariag, Atmaram and Ramnarain. 'The five prosecutors state, that they came to the sudder station 'several times for their money, but were told by the prisoner 'to go home, as the money had not yet been issued; and this 'false representation continued until August 1851, when on 'applying to the collectorate, the *maliks* found that the money 'had been *paid* to the agent, on the 4th January 1851, seven 'months previously; that he then excused himself, saying it had 'been retained accidentally, and if eight days' leave was allowed, 'he would pay. This, however, was refused, and the collector 'was informed of the circumstance, and after inquiry made by 'that officer into the case, he considered the money to have been 'embezzled, and accordingly referred the case to the magistrate 'for trial. I should have mentioned that in July, when the '*maliks* became importunate, the agent said, well give me an '*acquittance* in full, and you shall have it. By this trick on the 'part of the treacherous agent, he obtained a *receipt* from all 'the *maliks* for the full amount, and by satisfying four out of 'the five, he brings forward these four in proof of the money 'having been paid in full, and by this manœuvre calculated upon 'securing the difference *viz.*, rupees $262 \times 5 = 1{,}310$. This is

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Case of BISHESHURDYAL, MOOKHTAR.

'evident, and for the following reasons, the prisoner declares 'that the money was paid about the 15th January 1851, *viz.*, 'on the very day on which the receipt is dated, that it was paid 'direct to the true *maliks* at Ruttonoora (Chuprah,) who were 'all present and who signed the receipt attested by three wit-'nesses, and which was written by Deendyal, the scribe. Now 'the four *maliks* (whom he cites as witnesses to his defence) 'state that they received their quotas, *viz.*, rupees 262 in August '1851, after the complainants had represented the case to the 'collector, and they know nothing of the receipt, whereas the pri-'soner says he paid all the *maliks*, in full on 15th January 1851, 'and at that time took the receipt again of the four witnesses, whose 'names are appended to the receipt. Only *one* ventures to appear; 'the rest were not found; and this one, Duffadar Khan, merely 'says he saw the *maliks* assembled at the *mookhtar's* lodgings, 'and that a bag of rupees (he presumes) was before them, but 'that no *money was counted or receipt executed* or delivered in '*his presence*. The scribe Deendyal, although he sides with the 'prisoner in regard to the execution of the receipt on *admissions* 'of the *maliks*, admits that *no money was paid in his presence*, 'nor did the *maliks* sign the receipt *before him*. Thus the 'prisoner has adduced no proof whatever of the money having 'been paid to the prosecutors. Moreover, it appears that Deen-'dyal, the scribe, who was apparently a coadjutor with the 'prisoner in this affair, wrote a *chittee* or letter, at the instiga-'tion of the prisoner, dated 22nd August 1851, to two of the '*maliks* (Hurdyal and Dilram,) admitting that the money was '*due*, and saying, that he would be responsible for the same, if 'they would file a petition in the collectorate and get the case 'erased from the file. This also shows that the money had 'not been paid up to that date, and Deendyal was privy to this 'fraud and embezzlement.'

" 'The law officer found the prisoner guilty, in which I fully 'concurred, and considering this a case in which the provisions 'of Act XVI. of 1850 should be applied, I directed the ma-'gistrate to realize (after the expiration of three months) the 'amount embezzled, by the attachment and sale of the prisoner's 'property, and to distribute the same in equal shares amongst 'the five prosecutors.' "

Sentence passed by the lower court.—Five (5) years' imprisonment, with labor in irons, and a fine of Company's rupees one thousand three hundred and ten (1,310), to be levied by the magistrate under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—" The proceedings in this case were quashed by this court on the 28th November 1851, see page 1618 of the Reports of Cases decided in that month, in consequence of an imperfec-

tion in the indictment. The prisoner was recommitted on a charge properly framed, and has been again convicted by the sessions judge. He has appealed against the conviction. He pleads that the acknowledgment contained in the petition, which the plaintiffs presented to the collector, is independent of their receipt, conclusive proof of his having paid to them the money. There is no doubt, however, that their acknowledgment was obtained under a false promise to pay the money. The receipt, too, there are strong grounds for believing to be a forgery. The execution of it is denied by the plaintiffs as well as by their co-sharers, whom the prisoner satisfied and brought forward to prove the payment of the money. The fact of the prisoner having received the money, by virtue of his employment as an agent, and having misapplied the same in breach thereof, is fully established, and I see no reason to interfere with the finding and sentence of the sessions judge."

1852. May 21. Case of BISHESHUR-DYAL, MOOKHTAR.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GUNGA RAM AND MUSST. ROOPEEAH

versus

GUNNOO ROY.

1852. May 22. Case of GUNNOO ROY. The order of the sessions judge, who on convicting the prisoner of rape, had passed sentence upon him, having been quashed, and the trial referred (Clause 3. Section VI., Regulation XVII. of 1817.) the Nizamut Adawlut sentenced him to seven years' imprisonment with labor in irons.

CRIME CHARGED.—Rape committed on the person of Musst. Roopeeah.

Committing Officer, Mr. F. A. Vincent, deputy magistrate of Barh, Patna.

Tried before Mr. G. Gough, commissioner, with powers of a sessions judge, Patna.

Remarks by the commissioner.—"I have the honor to acknowledge the receipt of your letter, No. 548,* dated 22nd ultimo, communicating the court's orders, quashing my conviction in the case noted in the margin, and directing me to refer the trial; in conformity with which I beg now to do so.

"The particulars of this case are detailed in my statement of prisoners punished for the month of March last, and are to the following effect:—

* *Extract from letter from the Register of the Nizamut Adawlut, to the Commissioner of Patna, with powers of a Sessions Judge, No. 548, dated the 23rd April* 1852.

"Your conviction and sentence in the case of Gunnoo Roy are also quashed, as the crime established being rape, you should not have disposed of the case but referred it, under Clause 3, Section VI. Regulation XVII. of 1817, for the orders of the Nizamut Adawlut. You will do so now, making the necessary alterations in your statements as in the above case. Such an oversight as this the court did not expect from an officer of your position and experience."

1852.

May 22.

Case of GUNNOO ROY.

"The crime with which the prisoner was charged was committed under the following circumstances:—The prosecutrix, Musst. Roopeeah, was in company with Musst. Hayteah, Musst. Chunchullea and Musst. Nungree gathering *saug*, when a verbal dispute arose between them and the prisoner. The women then ran away; but the prosecutrix fell down, when the prisoner came up and violated her. This is proved by the clear evidence of the above-named women. The prisoner, in his defence, urges that he had a quarrel with Gunga Ram, the brother of the prosecutrix, but nothing is shown to throw discredit on the evidence adduced in support of the prosecution. The law officer convicts the prisoner Gunnoo Roy; and I have accordingly sentenced him to four (4) years' imprisonment with labor in irons.

"It is with great pain I find myself subjected to the animadversion of the court in regard to my proceedings connected with this case, and beg to explain that I took upon myself to award punishment, thinking that I was authorized to do so under Clauses 1 and 2 of Section VI. Regulation XVII. of 1817, in which the crime of rape is enumerated, and authority given to the courts of circuit to award punishment. It was no oversight; for I was about to refer the case to the court, under Clause 3 of the above Section, and had actually commenced a letter for that purpose, but, on reading over the Clauses quoted, it appeared to me that, as the case did not call for more severe punishment than I was authorized to adjudge, I was competent to sentence the prisoner to such punishment as I deemed adequate to his guilt. Clause 3 certainly directs a reference to be made to the higher court, but, adverting to the two previous Clauses, I was led to interpret the third Clause as referring to cases of a more aggravated nature."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The prosecutrix, Musst. Roopeeah, charges the prisoner Gunnoo Roy, Rajpoot, with committing a rape on her person. The witnesses depose to the fact that they saw him commit the act, and examined the person of the prosecutrix after its occurrence, which showed proofs that the crime had been completed. The prisoner has cited evidence to character and to the existence of a dispute between him and the brother of prosecutrix. This does not, in my opinion, throw any doubt on the truth of the evidence to the prosecution. I convict the prisoner Gunnoo Roy of rape, and sentence him to be imprisoned with labor and irons for seven (7) years."

PRESENT:

A. J. M. MILLS, and R. H. MYTTON, ESQRS., *Officiating Judges.*

TARA CHAND

versus

TAREE, ALIAS TARAMUNEE BEWAH KYBURTINEE.

1852. May 22.

Case of TAREE, *alias* TARAMUNEE BEWAH KYBURTINEE.

Murder for sake of ornaments; sentence death.

CRIME CHARGED.—1st count, wilful murder of Oroon Chokra, son of the prosecutor, for the sake of his ornaments; and 2nd count, accessary to the above murder before and after the fact.

Committing Officer, Mr. J. C. Dodgson, joint magistrate of Jehanabad, Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 24th April 1852.

Remarks by the additional sessions judge.—"The boy Oroon was about eight years old. He lived with his parents in the village of Seebpore, as far as a man's voice can be heard from a *pharee*, and a mile from the thanna of Gatal. He wore two silver *karras*, worth about 3 rupees 8 annas, and a cloth, worth 3 annas. He returned home from school about 10½ A. M. on the 31st of December last, and was seen by a tank close to his father's house. It is also said by the witnesses Nos. 16 and 17, that the prisoner enticed away the child with her, having come to his father's house to borrow a little oil. I do not see sufficient reason to disbelieve these witnesses; but it is worthy of consideration that the prisoner was not accused until the murder was proved, by the body having been found. The boy was afterwards missed, and was not again seen alive; but the next morning his body was found with his throat cut on a dung heap. The prisoner appears to have been at once accused, and to have been apprehended. A reaping-hook was found hid near her house, near where a cow was kept, and in her house were marks of blood, and against the wall were bloody finger marks in two places. There were also marks of blood on articles (a harrow, &c.,) outside the house, which might have been carried outside after the murder. At 4 P. M. the prisoner made a deposition before the police, in which she accused one Guropershad, a connexion of hers, of having committed the murder in her house with her reaping-hook; and on the 2nd of January, before the deputy magistrate of Jehanabad, she made a similar statement. She said she was not herself present when the murder was committed, but that she came to the house when Guropershad was stripping the corpse of the ornaments, and that she concealed the crime on the

1852. May 22. Case of TAREE, *alias* TARAMUNEE BEWAH KYBURTINEE.

promise of receiving 2 rupees hush-money, &c. There were no marks on the boy's fingers or on his body to show that he had struggled, and it is very possible that he was held by one person, and that he had his throat cut by a second; and since the cloth and the ornaments which the boy had on were not recovered it is likely that some accomplice carried them off; but the prisoner is a stout and strong-looking woman, fully capable of overcoming a child of eight years of age and of carrying away his corpse. Considering that she enticed the child from near his own home, and that the child was murdered in her house, and that she saw it immediately afterwards stripped of its ornaments and kept the body in her house at least thirteen hours, or from 11 A. M. until the moon went down after midnight, I cannot but believe that she committed the murder, either alone or with the help of some other person; and I consider it to be my duty to propose that she be punished with death.

"The reaping-hook weighs rupees 13¼, and is 14 inches long."

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and R. H. Mytton.)—MR. R. H. MYTTON.—"The first count charges the prisoner as a principal, the second as an accessary before and after the fact. The *futwa* finds her guilty on the second count as an accessary after the fact only, and pronounces her liable to *tazeer*.

"The sessions judge finds her guilty as a principal in the murder, and suggests a sentence of death.

"The evidence of the mother of the deceased and of Modoo Gayn proves the fact of the prisoner having enticed the child to accompany her, after which time it was no more seen alive. This evidence is corroborated by the facts that when the child's father asked for him, the mother, Sreemutty, told him that the prisoner had taken him away; that the father accordingly went to inquire for him at the prisoner's, and that when the corpse was found, she was immediately taxed with the murder. It is true, as the sessions judge remarks, that the prisoner was not suspected of the murder until the body was found; but until that occurred, the fact of the child having been murdered does not appear to have been suspected. On examination of the prisoner's house the bloody marks discovered, indicated plainly that the murder had been committed there, with a *kaistia* or reap-hook, admitted by the prisoner to be hers, and to have been concealed in some ashes by her.

"This circumstantial evidence would, in the face of a complete denial, have been sufficient to support a conviction of the prisoner as a principal. It only remains therefore to be considered whether the attempt to explain the strongest part of the evidence by an avowal of accessaryship to the crime, and by an accusation of another as the actual murderer, should be admitted or not,

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This question should, in my opinion, be determined on a consideration of the probability of the story told by the prisoner.

"To the darogah she stated as follows:—

"'Yesterday, at 1½ *puhur*, I went to beg oil at the prosecu'tor's. His wife observed you have never given the *mossoory* '*kolay* to Oroon (deceased) which you promised. I said, I had 'not got any. I went to Noboo's to order some cloth and on 'my return I found Oroon and Guropershad sitting there. I 'asked why he had come, Guropershad said, what is that to 'you, go to your work. I then went to my maternal uncle's, 'and met Mohoor Dapy and Modoo's mother, who said where are 'you going, your aunt is calling you. I then returned home and 'saw Guropershad in the corner of my house and Oroon lying 'dead and this *kaistia* bloody lying there. Oroon had wounds 'in the neck.'

"It is plain from this statement that the prisoner found it difficult in the face of all her neighbours to deny that she had gone for oil to the prosecutor's house, and that mention had been made of giving the child *mossoory kolay*. She then endeavoured to account for her absence from home by a story of her going here and there, and meeting this person and that person. None of these did she call as witnesses in her defence.

"If the prisoner was not an accomplice, why should Guropershad select her house for the perpetration of the murder? It is absurd to suppose that he would do so, and still more so that after having done the deed, he would not immediately decamp.

"To the magistrate she omitted all the preliminary portion of her tale, merely stating that she was from home when the murder was committed, and returned just as Guropershad was taking off the child's ornaments.

"If she had been innocent of complicity in the crime, she would have been naturally horrified at the sight which awaited her return home, and would have immediately raised an alarm.

"I reject the prisoner's attempted explanation of the bloody marks in her house as quite incredible, and convict her as a principal in the murder of Oroon for the sake of his ornaments, and concur with the sessions judge in the proposed sentence of death."

MR. A. J. M. MILLS.—"The law officer of the Sudder Nizamut Adawlut convicts the prisoner on her own confessions of privity in concealing the murder, and declares her liable to *tazeer*. I dissent altogether from this *futwa*.

"The prisoner's confessions, taken altogether as a whole, are so inconsistent with the circumstances of the case, that I cannot take what she has said in her favor to be true. Nothing was found to warrant any suspicion against the person she accused of having committed the murder, while the facts of her having

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Case of TAREE, *alias* TARAMUNEE BEWAH KYBURTINEE.

inveigled the child to her house; of the child having been murdered there, as indicated by the bloody marks on the wall and on the floor; and of the reap-hook, the instrument of death, being found hid under some ashes outside her house, taken with her admissions that she concealed the reaping-hook, and kept the body in her house until night, afford that degree of violent presumption against her as scarcely to leave a doubt of her guilt. She may have been assisted by another, but her enticing the child to her house furnishes a forcible inference that she took a principal part in the murder. I am of opinion that the prisoner must be held guilty of murdering the child for the sake of its ornaments, and, seeing nothing in extenuation, I sentence her to suffer death, subject to the prescribed provisions in case of pregnancy."

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

TRIAL (No. 1), ASIRUDDEEN,
TRIAL (No. 2), RUN GAZI
versus
SHEIKH AMJUD.

1852.

May 24.

Case of SHEIKH AMJUD.

The consolidated sentence passed upon the prisoner convicted in two cases, upheld.

CRIME CHARGED.—TRIAL (No. 1), 1st count, theft of two bullocks and a cow belonging to the prosecutor, valued at rupees 9; 2nd count, accomplice in the above; and 3rd count, receiving and retaining in his possession two stolen bullocks and a cow, the property of the prosecutor, valued at rupees 9, knowing it to have been such.

TRIAL (No. 2), 1st count, theft of two bullocks belonging to the prosecutor, valued at rupees 9; 2nd count, accomplice in the above; and 3rd count, receiving and retaining in his possession two stolen bullocks, the property of the prosecutor, valued at rupees 9, knowing it to have been such.

CRIME ESTABLISHED.—TRIAL No. 1, theft of two bullocks and a cow belonging to the prosecutor, Asiruddeen.

TRIAL No. 2, theft of two bullocks belonging to the prosecutor Run Gazi.

Committing officer, Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, officiating sessions judge of Tipperah, on the 25th March 1852.

Remarks by the officiating sessions judge.—"The prisoner, who only thirteen months ago was released from jail, on the expiry of his sentence to eight (8) years' imprisonment, with labor and irons, on conviction of dacoity, was arraigned on two distinct charges of cattle-stealing committed on the same night.

1852. — May 24. Case of SHEIKH AMJUD.

"He was apprehended before daybreak in the act of driving the stolen cattle in the direction of his home, and his confessions, both at the thanna and before the magistrate, were ample and distinct. Before me he pleaded 'not guilty,' but declined urging anything in support of his plea, and, in fact, appeared careless about making a defence at all.

"His apprehension, while driving the cattle away, was satisfactorily proved by three witnesses, (chowkeedars,) who, it appears, had been raised to exert themselves, in consequence of the frequency of cattle-stealing in their neighbourhood. His confessions were also shown to be perfectly spontaneous and voluntary.

"The Mahomedan law officer found the prisoner guilty on the second count, complicity; while I convicted him on the first.

"This difference, however, does not render reference to the higher court necessary, as it involves no discrepancy of opinion as to the amount of punishment to which the prisoner is liable.

"The Mahomedan law officer's *futwa* states, that the prisoner's previous conviction tends to show that he is consequently liable to *akoobut*.

"Being also of opinion, from the prisoner's previous career, and from his demeanour while on trial before me, that the magistrate has rightly described him in the calendar as irreclaimably bad in character, I sentenced him as shown in column 12.

"I am aware of the case 'Mohun Goalla *versus* Bundoo Rajwar', in which, on the 18th of February 1851, the presiding judge of the presidency court reduced a similar sentence, passed under very similar circumstances, to one for four (4) years in banishment with labor and irons. But in the present instance the previous offence was a more serious one, and was followed at as short an interval by a double theft on the same night. This consideration, coupled with the absence of all apparent fear, shame or regret on the part of the prisoner while before me, appear to create sufficient distinction between the two cases to justify a severer sentence."

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor and irons, in banishment, being a consolidated sentence for two offences.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackon.)—"I see no reason to interfere with the joint sentence passed in these two cases on the prisoner Sheikh Amjud."

1852.

May 24.

Case of MUSST. JESWUNT, *alias* JESSIAH.

A woman murdered her illegitimate infant child, of a few days' old, by strangulation. The crime being one of deliberate child-murder, the sentence, in conformity with the precedents of the court, was of imprisonment for life, with labor suited to her sex.

The commissioner, with the powers of sessions judge, had erroneously accepted and acted on a *futwa* that the causing of death by strangulation does not fall within the definition of wilful murder according to the Muhomedan law. The conviction of culpable homicide in such a case was, however, directly opposed to the rule prescribed by Section LXXV. Regulation IX. of 1793.

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

GOVERNMENT

versus

MUSST. JESWUNT, ALIAS JESSIAH.

CRIME CHARGED.—Wilful murder of her new-born child.

Committing Officer, Mr. W. T. Tucker, officiating magistrate of Patna.

Tried before Mr. G. Gough, commissioner, with the powers of sessions judge, Patna.

Remarks by the commissioner.—"I have the honor to acknowledge the receipt of your letter, No. 548,* dated 22nd ultimo, communicating the court's orders, quashing my conviction in the case noted in the margin, and directing me to refer the trial, in conformity with which I beg now to do so.

"The particulars of the case are detailed in my statement of prisoners punished for the month of March last, and are to the following effect:—

"The prisoner, who is a widow, appears to have borne an illegitimate child to a person named Choonee Singh, in consequence of which she was turned out of doors by her relatives. She then, with her infant, who was but a few days' old, sought succour from Choonee Singh, who brutally turned her away from his house, and refused all aid. She then went to the police *chowkee* in her neighbourhood, and finding that nothing could be there done for her or her child, she returned to Choonee Singh, who treated her as he had before, and drove her from his door. The unfortunate woman appears to have been driven to distraction, and hopeless of obtaining maintenance for herself or her child, destroyed it apparently in a fit of despair, by suddenly twisting its neck, thereby causing death. The above is clearly established; but the prisoner in her defence says the child was

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* *Extract (paragraph 1) from a letter from the Register of the Nizamut Adawlut to the Commissioner of Patna, No. 548, dated 22nd April 1852.*

"The court having had before them your letter, No. 1605, of the 8th instant, submitting the statements connected with the sessions of jail delivery held by you in the month of March last, and finding that this case* is clearly one which requires a conviction of murder, whatever may be considered to be, under all the circumstances, an appropriate sentence, quash the conviction of culpable homicide and the sentence of three (3) years' imprisonment passed upon the prisoner on the 13th of March last, and direct that you refer the trial in the regular course, expunging the case from statement No. 6, and entering it in the register of trials referred, which you are requested to submit."

* Musst. Jeswunt, *alias* Jessiah, No. 3, of statement No. 6.

killed by Choonee Singh. This, however, is wholly unsupported by evidence. The law officer convicts the prisoner of culpable homicide, and liable to *deeyut*. In concurrence with this finding, I have sentenced Musst Jeswunt, *alias* Jessiah, to three (3) years' imprisonment, without labor in irons.

1852.

May 24.

Case of Musst. Jeswunt, *alias* Jessiah.

"I regret much that my proceedings should have been disapproved of by the court. The circumstances attending the death of the child, on account of which the prisoner was committed for trial, seemed to me characterised with so much of a mitigating nature, that I could scarcely consider the prisoner guilty of wilful murder, and thought the punishment I awarded adequate to the offence, under such peculiar circumstances."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"It is clearly proved that the prisoner murdered her infant child by strangulation. The *futwa* declares, in broad terms, that such a mode of causing death does not fall within the definition of wilful murder according to the Mahomedan law. The commissioner, with the powers of sessions judge, accepted this *futwa*, and treated the case as one of culpable homicide only. This is, however, directly opposed to the rule and course of proceeding prescribed by Section LXXV. Regulation IX. of 1793.

"The prisoner must be convicted of wilful murder. It is by no means clear, upon all the circumstances on the record, that she had had connexion only with Choonee Singh, or that she had a just right to expect that he would acknowledge the child, or support her and it. Under any circumstances, the case is one of deliberate child murder, and I cannot, under the precedents of the court, (*see* the Index to the Reports) award against her, for such a crime, a less punishment than imprisonment for life, with labor suited to her sex."

PRESENT:

J. R. COLVIN, Esq., *Judge.*

GOVERNMENT

versus

PUNDUBRAM SHAH.

1852.

May 25.

Case of PUNDUBRAM SHAH.

A prisoner had, in sudden irritation, struck his mother with a *dâo*, it was not clear whether with the sharp edge or with the handle, and she died from the effects of the cut or blow. As the nature of the wound, and the precise cause of death, remained doubtful, the conviction was of culpable homicide only, and the sentence passed was of imprisonment for ten years with labor and irons. With reference to his proved disposition to insanity, the magistrate was directed carefully to watch the prisoner's state of mind, while undergoing his sentence.

CRIME CHARGED.—Wilful murder of Musst. Doorun.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet.

Remarks by the sessions judge.—"In obedience to the court's instructions* conveyed in their letter, No. 550, of the 23rd April last, I have the honor to submit the case of Pundubram for final orders.

"On the 9th February last; the prisoner called to his neighbours, and asked them to help him in burning his mother's body, whom he had killed; but they gave notice instead to the zemindar, who sent to the thanna, and he was arrested. The prisoner pleaded 'guilty' before this court, and made a full confession twice before the police and once before the magistrate, in which he stated that on the 8th February, when he returned home, his mother had no dinner for him, and that the next day he thought there was less cotton in the house than there ought to be, and on questioning his mother, she used irritating language to him, and that he in his anger struck her with his *dâo* and killed her, and that he then carried out her body and burnt it. These confessions were fully proved, and were made when the prisoner was quite sane.

"He was sent in by the police on the 13th, and arrived here on the 16th, and he was then so evidently insane that he was sent to the hospital where he was very violent, but recovered after ten days' treatment.

"The civil surgeon deposes that he is unable to state the cause of his madness; but that he thinks it probable he may have a relapse, though he is now perfectly sane.

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* *Extract from letter, No.* 550, *dated* 23*rd April* 1852, *from the Register of the Nizamut Adawlut to the Sessions Judge of Sylhet.*

"The court, having had before them your letter, No. 15, of the 14th instant, submitting the statements connected with the sessions of jail delivery held by you in the month of March last, and observing that the circumstances stated by you show this case* to be one of murder by the Mahomedan law, quash the conviction of culpable homicide and the sentence of seven (7) years' imprisonment with labor and irons passed upon the prisoner Pundubram Shah on the 25th of March last, and direct that you refer the trial in the regular course, expunging the case from Statement No. 6, and entering it in the Register of Trials referred, which you are requested to submit."

* Pundubram Shah, No. 1 of Statement No. 6.

1852.

May 25.

Case of PUNDUBRAM SHAH.

"His brother alone says that the prisoner has been mad for two months; but he is contradicted by his neighbours, who state that they have never heard of his being mad or odd, or being addicted to intoxicating drugs, so the madness has, in all probability, been occasioned by remorse.

"Both the jury and myself, after talking with him, are perfectly convinced that he was in the possession of his faculties on the day of trial; but he looks ill, and I have directed him to be kept in the hospital till quite well.

"The homicide appears, from his confession, to have been committed in a fit of anger; and as there are no eye-witnesses, his own account of the transaction must be taken as the true one; and I accordingly concur with the assessors' opinion that he is guilty of culpable homicide only, and beg to recommend a sentence of seven (7) years' imprisonment with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"The confessions of the prisoner have not been of so uniform a purport as the statement of the sessions judge would imply. Before the law officer (his confession was not taken before the magistrate personally, probably through the illness of that officer, but there ought to have been a distinct explanatory note on the point according to the Circular Order No. 56, of March 27th 1851,) the prisoner said that he struck his mother, he does not know with what, having been out of his senses at the time from fasting. In one of his confessions to the police, he describes the blow as having been with the *handle* of a *koolharee*. In the other, he states that it was with either a blow or a cut of a *koolharee* or a *dáo*. The Mahomedan law makes distinctions in regard to a conviction for murder, or for culpable homicide, as to death caused by a wound with a cutting weapon. In this case, however, there is no evidence as to the actual nature of the wound but in the prisoner's confessions; and these, as above shown, have not been consistent or clear. The conviction may, therefore, properly remain one of culpable homicide; but the attack by the prisoner on his mother appears to have been very wanton and reckless, and I cannot pass a less sentence on him than of imprisonment for ten (10) years, with labor and irons. With reference to his proved disposition to insanity, the magistrate will be careful to have reports from time to time of his state of mind, and to have him examined by the medical officer."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

TRIAL NO. 2.—RAMLALL CHATTERJEA (No. 3).
TRIAL NO. 4.—DOOKHEE SHEIKH, ALIAS DILJAN (No. 4).

1852.

May 26.

Case of RAMLALL CHATTERJEA and another.

The one prisoner being acquitted of perjury, there being nothing to show that he wilfully and fraudulently gave false evidence on a material point, the other, charged with suborning him to commit perjury, was also necessarily acquitted.

CRIME CHARGED.—TRIAL NO. 2.—Ramlall Chatterjea, subornation of perjury, in having, on the 2nd December 1851, corresponding with 17th Aghun 1258 B. S., intentionally and deliberately caused a false deposition to be given by Diljan Sheikh, under the false name of Dookee Sheikh, *alias* Diljan, on a point material to the issue of the case before the magistrate of zillah Moorshedabad.

TRIAL NO. 4.—Dookhee Sheikh, *alias* Diljan, 1st count, perjury, in having, on the 2nd December 1851, corresponding with 17th Aghun 1258, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the magistrate of Moorshedabad, that Ladlee Khanum sealed a *mookhtarnama* in his house, and subsequently, to a question on the same date, stated that he had no house, but lives in the house of his aunt, Tooknee Bewah; and in having, on the 13th December 1851, corresponding with 28th Aghun 1258, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the said officer, that neither he nor Tooknee Bewah had a house, but the *mookhtarnama* was executed in the house of Selamut Alee, such statements being contradictory of each other on a point material to the issue of the case; and 2nd count, perjury, in having, on the 12th May 1851, corresponding with 30th Bysack 1258, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the magistrate of Moorshedabad, that his name is Diljan Sheikh, and in having, on the 2nd December 1851, corresponding with 17th Aghun 1258, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the said officer, that his name is Dookhee Sheikh, *alias* Diljan, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—TRIAL NO. 2.—Ramlall Chatterjea, subornation of perjury.

TRIAL NO. 4.—Dookhee Sheikh, *alias* Diljan, perjury, part of the 1st count, *viz.*, the two statements intentionally and deliberately given before the magistrate on the 2nd December 1851, under a solemn declaration taken instead of an oath, which were

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contradictory of each other on a point material to the issue of the case, and the whole of the second as charged by the magistrate.

Committing Officer.—TRIAL NO. 2.—Mr. C. T. Carnac, officiating magistrate of Moorshedabad.

TRIAL NO. 4.—Mr. T. C. Loch, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, (TRIAL NO. 4) on the 21st January, and (TRIAL NO. 2) 8th April 1852.

Remarks by the sessions judge.—TRIAL NO. 2.—"The prisoner was charged with subornation of perjury. He denied the charge; but it was clearly proved against him.

"In a case pending before the magistrate's court, he filed a *mookhtarnama* on the part of Ladlee Khanum with her seal upon it. The magistrate suspecting its genuineness instituted an inquiry and took down the depositions of Neamut Halshahana and Ramchunder, witnesses to the *mookhtarnama*. They deposed that the *mookhtarnama* was signed and sealed in the house of one Dookhee, and the *mookhtar*, on the 26th November 1851, being questioned where Dookhee Sheikh lived, stated he was a resident of Shahnugur. Dookhee was summoned through the darogah. The darogah reported that no one of that name resided in Shahnugur. The prisoner then, on the 1st December 1851, produced Diljan Sheikh as Dookhee Sheikh in the foujdaree court, who wilfully and deliberately deposed, under a solemn declaration, that his name was Dookhee, *alias* Diljan. But it appearing from the records that on a former occasion he called himself Diljan, and from his other contradictory statements on a point material to the issue of the case, he was committed to the sessions court charged with perjury; and on the 21st January 1852, convicted and sentenced.

"It was proved in evidence that his real name was Diljan, and that he was never called Dookhee.

"The prisoner produced Diljan as Dookhee Sheikh with the view of causing him to give a false deposition under a false name, which fact was clearly proved by the evidence of two of the peadahs of the foujdaree court, and the evidence of the foujdaree *naib* nazir.

"The prisoner in his defence maintained that Diljan's name was Dookhee, and that before him he only called himself Dookhee.

"The assessors who sat with me on the trial, convicted the prisoner of subornation of perjury; and concurring in the finding, I sentenced him as stated in the proper column."

TRIAL NO. 4.—"The prisoner is charged on the 1st count with perjury, in having, on the 2nd December 1851, corresponding with 17th Aghun 1258, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the magistrate of Moorshedabad, that Ladlee Khanum sealed a

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mookhtarnama in his house; and subsequently, to a question on the same date, stated that he had no house, but lives in the house of his aunt Tooknee Bewah, and in having, on the 13th December 1851, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the said officer, that neither he nor Tooknee Bewah had a house, but the *mookturnama* was executed in the house of Selamut Alee, such statements being contradictory of each other on a point material to the issue of the case.

"On the 2nd count, in having, on the 12th May 1851, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the magistrate of Moorshedabad, that his name is Diljan Sheikh, and in having on the 2nd December 1851, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said officer, that his name is Dookhee Sheikh, *alias* Diljan, such statements being contradictory of each other on a point material to the issue of the case.

"The prisoner denied the charge; it was, however, clearly proved against him.

"The two statements made by the prisoner on the 2nd of December, under a solemn declaration instead of an oath, were contradictory of each other on a point material to the issue of the case. They were also contradictory of the statement made by him, under a solemn declaration instead of an oath, on the 12th May 1851, on a point material to the issue of the case. The statement made by him on the 13th December was contradictory of the statements made on the 2nd December, on a point material to the issue of the case, and would have amounted also to perjury punishable under the law had not the magistrate put the prisoner on his oath on the 13th December *after* a Mofussil inquiry, the result of which threw discredit upon the previous statements of the 2nd December. Under these circumstances an answer from him, instead of a deposition, should have been taken. The other false depositions, however, deliberately given, are sufficient to convict him of perjury.

"The change of name and false personation in the depositions of the 2nd December were wilful and deliberate. His real name is 'Diljan' and not 'Dookhee', as proved even by the witnesses for the defence. In the *mookhtarnama* his name is given as 'Dookhee Sheikh'. The *mookhtar*, Ramlall, brought him to the magistrate's court as Dookhee Sheikh, and his styling himself 'Dookhee, *alias* Diljan', on the 2nd December, was evidently with the view of misleading and as a loophole for escape. The crime of perjury and the subornation of it is of frequent occurrence, and both deserve exemplary punishment; but especially the latter, when committed by men of influence in the courts.

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"The jurors who sat with me found the prisoner 'guilty,' and I concurred in the finding.

"The magistrate should be careful in future to direct his amlah to pay strict attention to the Sudder Dewanny and Nizamut Adawlut's Circular of the 3rd April 1840, when taking depositions according to Act V. of 1840."

Sentence passed by the lower court.—TRIAL No. 2, Ramlall Chatterjea, four (4) years' imprisonment with labor without irons. —TRIAL No. 4 Dookhee Sheikh, three (3) years' imprisonment with labor without irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"These two cases are connected together, and both prisoners have appealed. The prisoner Dookhee, *alias* Diljan, is convicted of perjury, and the prisoner Ramlall Chatterjea of suborning Dookhee to give false evidence.

"It appears that Dookhee Sheikh was summoned by the magistrate to prove the genuineness of a *mookhtarnama* filed by the prisoner Ramlall Chatterjea, which the magistrate suspected to be false. This suspicion was, however, eventually removed by the party who executed it coming forward and acknowledging it to be her act and deed.

"The prisoner Dookhee is convicted of the first part of the first count, and of the second count. The first part charges him with stating on oath that Ladlee Khanum executed the *mookhtarnama* at his house at Shahnugur, and then, in contradiction thereto, stating that it was executed in the house of Tooknee Bewah, his aunt, where he resided. It appears, however, that the power of attorney was executed at the house of Selamut Alee where Tooknee Bewah lived.

"It is not denied that the prisoner witnessed the execution of the deed, and though he told a falsehood regarding his own residence and the place where the deed was executed, yet, I am of opinion, it does not legally amount to perjury, as there is nothing to show that the witness wilfully and *fraudulently* deposed falsely on a point of materiality. For the same reasons, I do not think he is guilty on the second count. There is no proof that he was not the person who witnessed the execution of the deed, and his styling himself Dookhee, *alias* Diljan, in his deposition is not material as affecting the proofs in the case.

"The prisoner Dookhee having been acquitted, the prisoner Ramlall Chatterjea is almost, as a matter of course, entitled to his acquittal. He produced a person who called himself Dookhee, *alias* Diljan, but as there is no evidence to prove that he was other than the person who witnessed the deed, or that the prisoner knew him by any other name, the charge cannot be sustained.

"Upon these grounds, I acquit both prisoners and direct their immediate release."

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

GOVERNMENT

versus

JAN ALEE (No. 1, APPELLANT), OUGTHUNG MORUNG, ALIAS LYLUNG (No. 2), DAMLAM MORUNG (No. 3) AND HYDER ALEE (No. 4).

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The sentence passed upon the prisoner was upheld.

CRIME CHARGED.—1st count, uttering a forged *perwannah* dated 4th Magh 1213, *Mughy Sun*, with counterfeit seal and signature, with the intent to defraud or injure Kallindee Ranee; 2nd count, being in possession of the above document, knowing it to be forged with intent to defraud or injure Kallindee Ranee; and 3rd count, fraud.

CRIME ESTABLISHED.—Uttering a forged *perwannah*, with counterfeit seal and signature, with intent to injure Kallindee Ranee.

Committing Officer, Mr. F. B. Simpson, officiating magistrate of Chittagong.

Tried before Mr. S. Bowring, officiating sessions judge of Chittagong, on the 16th March 1852.

Remarks by the officiating sessions judge.—"It appeared from the evidence of the witnesses Nos. 2 to 4, that the four prisoners came to their village in the *jhoom* and produced a *perwannah*, telling the inhabitants it was the order of Government they should remove to Sunkur Churry. The whole of the inhabitants, Morungs, sixty or seventy in number, went with the prisoners, but were stopped about two *coss* off, by the witnesses Nos. 5 to 8, on the part of the zemindar Kallindee Ranee, who had claims against them for rent. A *rahdaree perwannah*, said to have been issued by the *huzoor*, was shown by Jan Alee (prisoner No. 1), but on being taken to the Ranee, the fraud was discovered and the prisoners apprehended.

"The prisoners denied all knowledge of the *perwannah*, and said they had gone into the *jhoom* on other business. Witnesses spoke to Jan Alee's good character, but the other prisoners established nothing in their favor. The witnesses (excepting one) for the prisoner No. 3 could not be found, but had they spoken, as he said he expected they would, such depositions would not have availed him.

"The jury found the prisoners 'guilty.'

"The forgery was very gross, but sufficiently well-executed to deceive such ignorant persons as inhabit the *jhoom*, though easily to be detected by any person at all educated. It was stated by the Morung witnesses, that the prisoners' object was

to procure them as *ryots*, land being valuable in the *jhoom* only according to the number of inhabitants on it; but it is not improbable that the witnesses themselves were willing to evade payment of rent due to Kallindee Ranee.

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"I agreed in the verdict, and considering Jan Alee had taken a lead in producing the forged *perwannah*, sentenced him to longer imprisonment than the other parties."

Sentence passed by the lower court.—No. 1, four (4) years' imprisonment without labor or irons, and Nos. 2, 3, and 4, each three (3) years' imprisonment without labor or irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on the prisoner Jan Alee."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

BHEENUCK ROY

v.

BHURUTH ROY.

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The finding of the sessions judge, who convicted the prisoner of culpable homicide, was altered to a finding against him of assault attended with culpable homicide, and the sentence was in consequence mitigated.

CRIME CHARGED.—Wilful murder of Toolshee Roy, brother of the prosecutor.

CRIME ESTABLISHED.—Culpable homicide of Toolshee Roy.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 23rd March 1852.

Remarks by the sessions judge.—"This is another instance of the fatal and reckless use of the stick, in this stick-ridden district.

"The deceased and the prisoner were the respective proprietors of two pea fields which adjoined each other, undivided by any intermediate boundary line. These fields appear to have been an old source of dispute, and on the present occasion when the crops were being cut, both parties met, and a quarrel ensued, which ended in the death of the deceased.

"The prosecutor describes the quarrel, which he witnessed from a short distance. According to his account he with the deceased, his brother, and the prisoner with his comrades were cutting the peas, when, the prisoner's party cutting beyond their own fields, the deceased remonstrated and those present formed themselves into a committee to adjust the dispute; but the prisoner objected to their decision and resumed the cutting, when, on the deceased protesting, words ensued, and the prisoner with the others assaulted the deceased. The prisoner struck him on

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the head with his stick, the deceased fell, and the prosecutor with the witnesses Nos. 1, 2 and 3 carried him off and placed him under a tree. The prisoner ran away but was seized by the chowkeedar. The deceased was taken to the thanna, and died the same evening an hour or two after the assault.

"The medical evidence (which is that of the native doctor) proves the existence of a severe blow on the head, which caused injury to the brain and was the immediate cause of death.

"The prisoner pleads 'not guilty;' admits a quarrel with the deceased about the peas, and a fight; but alleges that the stick of another man, named Ramburt Roy, struck the deceased and himself at the same time.

"Five witnesses adduced in support of the plea allege their ignorance of the circumstances. Two of them, not examined before the magistrate, say that both parties were concerned in the fight.

"The *futwa*, acquitting the prisoner of wilful murder, convicts him of culpable homicide and declares him liable to *akoobut*.

"The murderous and savage use of the enormous *lattee* which is seen in the hand of every Arrah peasant, is the most prominent evil of this district.

"I have brought the subject generally to the notice of the higher court in my Annual Report.

"I consider it of much importance to the welfare of the people that this brutal ferocity should be repressed as far as it may, by invariable severity of sentence.

"In the present case the evidence of the prosecutor shows the prisoner to have been the aggressor, and this evidence is corroborated by that of the other witnesses as far as it goes, though they did not clearly witness the actual assault.

"A single blow appears to have been inflicted by the prisoner. This is usually the case here. A second is seldom required.

"I sentence the prisoner to seven (7) years' imprisonment with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner has appealed. His pleader Ameer Alee urges that he is entitled to his release on the evidence for the prosecution.

"The witnesses for the prosecution depose, that both parties fought with each other with clubs, but they did not see who beat each other; indeed in cases of this kind, where nothing but confusion exists, it is seldom possible to discriminate the share individuals take in the disturbance. The conviction of the prisoner, therefore, of the crime charged, rests on the evidence of the prosecutor. The account as given of the assault is inconsistent and suspicious, and I cannot convict the prisoner of killing the deceased on the direct and interested evidence of him only.

"It is, however, proved, that the prisoner was the aggressor, and was one of the party who assaulted the deceased. I convict him therefore of an assault attended with culpable homicide, and sentence him to five (5) years' imprisonment with labor and in irons."

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PRESENT:

SIR R. BARLOW, BART., and W. B. JACKSON, ESQ., *Judges.*

JADUB SHAIN

versus

LOCHUN ROY.

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The prisoner convicted of killing the deceased, who caused the search of his house on a charge of dacoity, was sentenced only to transportation for life, instead of capitally, in consideration of provocation by the mode of search.

CRIME CHARGED.—Wilful murder of Madhub Shain, the brother of the prosecutor, with a sword, in the day-time, on 24th October 1851, corresponding with the 8th Kartick 1258 B. S.

Committing Officer, Mr. C. H. Campbell, officiating joint magistrate of West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 17th March 1852.

Remarks by the sessions judge.—"The prisoner pleads 'not guilty.'

"The prosecutor was not present when the deceased was slain, but the circumstances of the case appear, from the evidence of the eye-witnesses, to have been as follows:

"A dacoity took place in the house of the deceased, Madhub Shain, (who was the prosecutor's brother,) at Majedihee on the night of the 6th Kartick last, when the deceased and his servants Roop Baooree, witness No. 6, and Hurree Baooree saw the faces of some of the dacoits. Notice was immediately given to Muddun Roy Digwar, witness No. 1, who, with Punchaie Roy Chowkeedar, witness No. 7, Mohun Chowkeedar, witness No. 5, Romaie Roy Khyra, witness No. 2, Mudhoo Roy Khyra, witness No. 3 and others, went next morning to investigate the matter. On his asking the deceased whether he had recognized any of the dacoits, he replied, that he had seen the faces of two of them, and would know them again. The Digwar and the rest then went out to look for footsteps, and having found some on the wet mud to the south of the house, traced them in the first instance, to a village called Burtor, where the deceased pointed out a person named Muthoor Roy, as one of those whom he had seen at the time of the dacoity. A guard was placed over this individual's house, and notice sent to thanna Chatna; the party then went on to the village of Beekpore, and assembled the inhabitants, when the deceased pointed out Mudhoo Roy,

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the brother of the prisoner, as another of the persons concerned. A guard was placed over the house of the above person, and that of his father, Sohun Roy, with whom the prisoner lived. These two houses or huts, are situated close together, in a sort of enclosure of jungle with three others near them. That of Sohun stands, in the plan affixed to the record, to the west of that of his son Mudhoo. The door of Sohun's house is represented as opening to the north in the same plan, and that of Mudhoo to the south. Notice of what had been done was given to the thanna by the Digwar, Muddun Roy, witness No. 1, in person, and next morning, Prankisto Roy, witness No. 9, the mohurir of thanna Chatna, with Mudhoo Misser Burkundauz, witness No. 8, and the persons already mentioned, (except those left on guard over the houses of the suspected persons, on the previous day,) proceeded to Burtor, were Muthoor Roy's house was searched and a sword found, which the deceased recognized. The mohurir, No. 9, mentions in his deposition, that Sohun, the father of the prisoner, came to him while at Burtor, and offered to make every effort to recover the property lost in the dacoity, if his house and that of his son, Mudhoo were left unsearched. The *cortége* subsequently went on to Bheekpore, where they arrived at about 3 o'clock in the afternoon, when the mohurir told Sohun Roy to send the females of the family out of the way, as the houses of himself and sons must be searched. Sohun proceeded to do what was required of him, and came back shortly, when the mohurir asked him where he had bestowed the women, he answered that he had removed them from the south doored house, *viz.*, Mudhoo's, to the north doored one, *viz.*, that inhabited by himself and the prisoner Lochun, and that they could be put back again after the former had been searched, if it was then considered necessary to examine the latter. The mohurir then decided that Mudhoo's house alone could be searched, as he was the only one of the family suspected by deceased, and directed Muddun Roy Digwar, witness No. 1, Mudhoo Misser Burkundauz, No. 8, Soobul Mundul, No. 4, Romaie Roy Khyra, No. 2 and deceased, to proceed accordingly. Lochun and Mudhoo declared that they would not permit search to be made on the information of a mere *tumoolee*, or low shop-keeper, like deceased; insisted on having a list of the property taken from the latter; abused their father, Sohun, when he attempted to dissuade them from resistance; and pushed back the above persons when they attempted to open the door of Mudhoo's house. This dispute seems to have lasted for some time, when the mohurir finding persuasion of no avail, and more energetic measures necessary, proceeded to put a stop to the interference of the prisoner and his brother, by seizing their persons. Lochun was first laid hold of by him, and made over to one Gopee Ghut-

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wal (not summoned by the magistrate,) and Mudhoo was being placed in the hands of Muddun Roy Digwar, witness No. 1, when the prisoner (Lochun) broke away from Gopee, and going into his father's house, just in front, or a little to the right of where the mohurir was standing at the time, came forth with a drawn sword, with which he struck the deceased, who was near Mudhoo's door, a violent blow on the arm below the shoulder. Mudhoo perceiving what had occurred, got away also, and running into his house, brought out a *tangee*, or axe, with which he ran to assist Lochun, then in the act of pursuing the deceased, who was attempting to escape. Mudhoo out-ran the deceased, and spreading wide his arms, turned him back to prisoner, who thereupon inflicted five more severe wounds, which laid him dead upon the ridges of the ploughed field to the south of Lochun's house, in which the scene took place.

"The mohurir fled in the most cowardly manner, as soon as he saw the first blow struck, and so did the Burkundauz and most of the Digwars and Ghutwals present, without making the least attempt to save deceased; but some of the latter looked on at a respectful distance until they had seen him finished, and then went off to their respective villages.

"This infamous conduct of the so-called guardians of the public peace, is, I am sorry to say, general, and can only be prevented by the accordance of handsome rewards to such officers as show courage, and pensions to the wounded as well as to the families of such as may be slain in the execution of their duty.

"No attempt was made to apprehend either Lochun or Mudhoo, but the former came to the officiating joint magistrate on the 9th Kartick, or the morning after the deed had been committed, with the bloody sword in his hand, gave himself up and confessed the crime of which he had been guilty.*

"The eye-witnesses did not, of course, all depose to the same facts consecutively, in the same manner, but there were no material discrepancies in the statements made by them before me, nor were they discordant with the *izhars* given by them before the officiating joint magistrate, except in one grave respect.

"Reference to the Vernacular record will show the court, that the witnesses named in the margin, either when directly questioned by me or of their own accord, deposed in my presence, that Mudhoo, the prisoner's brother, was his deliberate accomplice in the slaughter of the deceased, *i. e.*, that he pursued the latter and turned him back with outspread arms, upon his bro-

No. 1, Muddun Roy Digwar.
" 2, Romaie Roy.
" 3. Mudhoo Roy Khyra.
" 4, Soobul Mundul.
" 6, Roop Baooree.
" 7, Punchaie Roy, chowkeedar.

* The prisoner's defence and confession, and the depositions of the additional witnesses, prove that Mudhoo accompanied him.

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ther's sword. The depositions given before the magistrate, with the exception of that of Muddun Roy, witness No. 1, contain no mention of this circumstance, whereas the witnesses Mudhoo Roy, No. 8, and Punchaie Roy, No. 7, declared to me with considerable heat, that they had certainly mentioned it when the foujdaree mohurir was taking down their depositions. Though the witnesses Romaie Roy, No. 2, and Soobul Mundul, No. 4, both acknowledged the fact in answer to my direct question, as to whether it had occurred or not, their evidence is not so trustworthy as those of the others above-named, because there is some unsteadiness in that part of it, which describes what happened after the first blow had been struck. This is most probably attributable to their having immediately fled in great fear, and, consequently, retained no very distinct recollection of subsequent occurrences. Still, Mudhoo's complicity with his brother is distinctly proven, by the fact of his having made a diversion with his *tangee*, when the latter attacked the deceased, which is mentioned by both deponents, as well as by all the other eye-witnesses examined.

"I see great reason to believe that the witnesses Mudhoo Roy, No. 3, and Punchaie Roy, No. 7, did actually disclose the material fact in question, in the criminal court, and that the same must either have been excluded from their *izhars*, designedly, or left out in consequence of the adoption of the highly erroneous practice of taking them in abstract, and not, as nearly as possible, in the words let fall by the deponents. The immediate consequence was the release of Mudhoo Roy, who was evidently his brother's deliberate accomplice, by the officiating joint magistrate, who does not, I regret to say, appear to have examined the witnesses generally with that intelligent care which was necessary in such a case.

"The *sooruthal* has been satisfactorily deposed to, as well as the confession made by the prisoner before the above officer, who appears to have thought his own statement, in regard to the voluntary appearance of the prisoner before him, with his bloody sword, on the morning of the 9th Kartick, sufficient; and consequently omitted to examine witnesses to that matter.

"The omission has been sufficiently supplied by the evidence of the eye-witnesses, Akbur Chuprassee and Nuffur Baooree, whose depositions will be found with the record, and who were sent for by me, through the present officiating joint magistrate, by proceeding on the 3rd March.

"The sword has been sworn to by all the eye-witnesses, with the exception of the mohurir, who fled too soon to be certain about the appearance of the weapon. Two of the witnesses to the confession have recognized it as having been lying near them when that document was drawn up; and the additional witnesses above-named have also deposed to its identity.

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"The two depositions of the civil assistant surgeon show, that six dreadful wounds were found on the body of the deceased; of which that on the arm below the shoulder, which divided the bone and large arteries (deposed by the eye-witnesses as the one first inflicted), caused speedy death, though either of the others might have had the same result, after the lapse of a longer period of time.

"The prisoner's confession, before the officiating joint magistrate, supported the depositions of the witnesses generally, except in regard to the complicity of his brother, Mudhoo, and declared insult to the women of his family, *after the houses had been searched*, to have been the cause of his attack upon the deceased.

"His defence is a recapitulation of his confession, with additional details and heightening circumstances, such as a particular description of certain cruel and disgusting treatment, said to have been inflicted upon his mother, his repeated prayers and entreaties for mercy to the mohurir, that individual's obduracy and violent conduct, the blows that he received from him, his attempt to kill himself with the sword when first drawn, additional details regarding his surrender to Mr. Campbell, &c. The great discrepancy consists in his saying that he struck some one, *but he does not know whom*, while whirling his sword in a desperate manner, to drive away the persons who were torturing his mother, whereas he distinctly told the officiating joint magistrate that he had struck Madhub Shain, and him only. When his confession to that officer was read over to him, he said that he could not recollect whether he had made such a statement, at that time, or not.

"As the prisoner had heard his confession repeatedly read over, and the examination of all the witnesses for the prosecution, it is not wonderful that his defence should have coincided with his said confession, in all its main features, with the exception of that which he felt most damaging to himself, *viz.*, his admission, that he had *struck the man who died*, and *him only*. The heightened colour given to his previous allegations, and the more minute details were, of course, thrown in *ad captandum*.

"The witnessses for the defence depose, generally, to having seen the mother of the prisoner pulled about, and her clothes removed from her person by deceased and Muddun Roy Ghutwal, No. 1, but their statements are not worthy of credit, when opposed to the strong and clear evidence for the prosecution.

"Perusal of the darogah of Chatna's report, of the 31st October 1851, attached to the record of the dacoity case, sent for by me on the 13th instant, and annexed, will show the court, that the houses of the prisoner and his brother Mudhoo were searched by that officer, after he had held his inquest upon the body of Madhub Shain, on the 25th October 1851, correspond-

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ing with the 9th Kartick 1258 B. S., or the day after the deed was done, when some of the missing property, valued at rupees 25-0-4, was found.

"The court will also perceive, on reading Mr. officiating joint magistrate Campbell's proceeding, of the 7th November last, which closed the record above alluded to, that the evidence of Hurree and Roop Baoorees, was not considered sufficient for the conviction of Muthoor Roy, Mudhoo and the prisoner, and that they were released from the charge of dacoity, accordingly.

"The law officer's *futwa* convicts the prisoner of wilful murder, upon his own confession and the evidence of the witnesses for the prosecution, and declares him liable to *kissas*.

"In this finding I concur.

"The endeavour to prove maltreatment of the women of his family, made by the prisoner, has signally failed; and the mere attempt to make lawful search for stolen property, in his house, was not provocation sufficient to excite any, but a most ferocious and dangerous ruffian, to pursue a fellow creature, and destroy him with repeated sabre cuts.

"It is impossible to say now whether the property said to have been taken from the deceased, was in Mudhoo's house, when the search was ordered, or not; but the desperate resolution to prevent search evinced by him and the prisoner, certainly leads to the presumption that it was; in which case the heinousness of the crime committed would be considerably enhanced.

"I regret to say, that I see no really extenuating circumstances in this case, and am therefore obliged to recommend, that the prisoner Lochun Roy, son of Sohun Roy, be hanged."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. W. B. Jackson.)—Mr. W. B. Jackson.—"The prisoner Lochun is charged with killing Madhub Shain, with a sword. The witnesses for the prosecution say, that a dacoity had taken place in Madhub Shain's house; that Madhub said he thought he recognized some persons. On the police mohurir's arrival, he went with Madhub and others to search the suspected houses. He searched Muthoor's house and found a sword, which Madhub recognized. They then went to the house of Mudhoo, whom Madhub said he thought he recognized among the robbers. Mudhoo lived with his brother, the prisoner Lochun, and his father, Sohun. The witnesses say that Sohun, by the mohurir's orders, removed the women and then he ordered the search to be made. The prisoner Lochun and his brother, Mudhoo, opposed it. After some attempt to induce them to permit it, they advanced to make the search. The prisoner Lochun then brought a sword out of the house and cut deceased, Madhub, a severe blow over the left shoulder. Madhub then ran away, but was followed by Lochun, assisted by his brother

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Mudhoo. On coming up to deceased, Lochun struck him several more blows with the sword and killed him. The prisoner Lochun immediately after went voluntarily to the magistrate's house and gave himself up. He does not deny the fact, but urges in extenuation of it, that the police people ill-treated him, and the women of his family. Several witnesses to the defence swear that the women were abused and their clothes pulled from them: but I think the evidence to the prosecution, who deny any ill-treatment of the women, more trustworthy, and more consistent with the rest of the facts of the case.

"I can find nothing in mitigation of the prisoner Lochun's crime. I would convict him of murder and sentence him to death."

Sir R. Barlow.—"There is ample proof that the deceased, Madhub Shain, was killed by the prisoner; the evidence proves it, and the prisoner admits it; but desires to palliate his crime by pleading that he was in a state of excitement, in consequence of the indignities to which the police subjected the females of his family, when they were about to search his house.

"It it be not established to the satisfaction of the court, that the females were maltreated and insulted, the prisoner's life is justly forfeit for the wilful murder of the deceased. If, on the other hand, there lies sufficient ground to conclude that the search was being irregularly made, and that the enormities detailed in the prisoner's defence were committed by the police on his women, or if it be shown that they were exposed to indignity and disgrace wantonly, then on the prisoner's confessions there are ample proofs against him such as would warrant a mitigated sentence and bar capital sentence.

"After looking at the case in all its bearings and carefully weighing all that has been laid before the court, I am of opinion, that the prosecution has not established by the clear and consistent evidence which alone would justify an extreme sentence, that the prisoner, without any cause and merely to prevent the search of his house, attacked and murdered the deceased, Madhub Shain. The legality or otherwise of the mode of search and the circumstances which attended it, are the points on which the disposal of this case turns. It was absolutely necessary for the police to prove the legality of their proceedings at the time of the search, and the witnesses for the prosecution, amongst whom are to be found the police mohurir engaged in the investigation, a burkundauz of the thanna, and some of the local police have deposed that all was properly conducted. Other witnesses, Muddun Roy, Romaie Roy, Mudhoo Roy, Punchaie Roy, however, also for the prosecution, *in the sessions* have very plainly deposed to the removal of the females from the spot before the search commenced. This fact

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is so material to the merits of this case, that it should have been distinctly proved in the *foujdaree court*. Before the magistrate, none of the witnesses named alluded to it, nor did the police mohurir who made the search, in his report, written on the spot, dated 24th October, state, that he had (as he afterwards on 5th November deposed before the magistrate,) requested that the females might be removed. The maltreatment of these females would altogether have rendered the search illegal, and therefore that fact having been urged by the prisoner, who himself proceeded to the magistrate's house and surrendered, should have been controverted and disproved at the earliest stage of the investigation; but it was not till the trial was held in the sessions court, in the month of February last, that the witnesses clearly spoke out and denied all irregularity in the search.

"The prisoner's defence before the sessions is evidently prepared by some agent. It describes a degree of maltreatment towards the females, which the prisoner, when he gave himself up to the magistrate, never alluded to; his witnesses depose that the women were pulled about and their clothes torn off them. This, no doubt, must have created much irritation in the prisoner's mind, and I am of opinion, from the general features of the case, that something did take place which caused the prisoner to attack the deceased, who was the proprietor of the house which the dacoits plundered, and who applied for the search of prisoner's house. Upon the whole, I think that the ends of justice will be satisfied, if the prisoner be sentenced to imprisonment for life in transportation. I would spare his life."

Mr. W. B. JACKSON.—"On re-consideration, and with reference to the remarks of Sir R. Barlow, Bart., I concur in the sentence of imprisonment in transportation for life."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

TOTEERAM BHUGGUT

versus

GOKUL BHUGGUT.

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Case of GOKUL BHUGGUT.

The prisoner, who was committed on a charge of murder, was convicted by the Nizamut Adawlut, of only wounding the deceased, who was not proved to have died from the wounds inflicted by the prisoner.

CRIME CHARGED.—1st count, wilful murder of Sunker Bhuggut, deceased, the father-in-law of the prosecutor; and 2nd count, severely wounding, with intent to murder, the said Sunker Bhuggut.

Committing Officer, Captain J. Simpson, principal assistant agent Governor General, Hazareebaugh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebaugh, on the 29th April 1852.

Remarks by the deputy commissioner.—"The prosecutor states that on the 13th or 14th Aghun (22nd November) last, he and the prisoner and Sunker Bhuggut and others, were at the house of Sidharee Bhuggut, who was very sick. At night the prosecutor was sleeping beside Sidharee Bhuggut in an inner room, and hearing an alarm, got up and saw the prisoner who had been bound by Suboor and others, and Sunker Bhuggut who was covered with blood, and who told witness that the prisoner had wounded him. Sunker Bhuggut had come to see Sidharee and was accompanied by Fukeera Bhat, Mukoond Bhat and the prisoner Gokul. Prosecutor does not know any reason for the murder. He did not ask the prisoner at the time. The prisoner's sister is a widow and has left her family for seven or eight years past. At the time of the murder she was at Goomeea. She lives with a tailor. The prisoner has other two sisters. The prisoner said that Fukeera Bhat wished to take his sister, and that he had therefore wounded Sunker. It was of the outcast sister, Musst. Budnee, that he spoke. Prosecutor has known the prisoner all his life, and has always seen him of sound mind. The sword and spear now in court belong to Sidharee Bhuggut. The prisoner and deceased came on Friday and stayed Saturday, when they and prosecutor ate and drank happily together. There was no dispute.

"The prisoner pleads 'not guilty.'

"No. 2, witness Bodhoo Kahur.—On the 13th or 14th Aghun last, Sunker Bhuggut, accompanied by the prisoner Gokul, and by Fukeera and Mukoond Bhat came from Kosmar to Hoosur village to see Sidharee Bhuggut, who was sick. They came on Friday, and on Saturday night Sunker Bhuggut slept on a cot in the verandah, and witness and Suboor and Mukoond

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and Parsad and Phagoo, all slept on cots quite close to him. The prisoner Gokul slept inside by the door-way, and about midnight the prisoner, taking a sword and spear that were in the room, began to wound Sunker, who exclaimed, 'oh! he has 'wounded me, he has wounded me!' on hearing which, witness awoke and saw the prisoner strike the deceased one or two blows, and the persons above-named then snatched the sword and spear from him. He did not speak. He was then as he is now, that is, quite sane. Witness does not know why the prisoner wounded the deceased. The villages of Kosmar and Hoosur, are twelve or fourteen miles apart. Sunker Bhuggut asked the prisoner why he had wounded him, the prisoner replied that it was his, the prisoner's, destiny. The night was dark and cloudy. Witness does not know of any dispute between Sunker and the prisoner. There was no light until a lamp was brought after the apprehension of the prisoner. Witness cannot say on what part of the body he saw the blows given. Witness saw by the flashes of lightning *(mulka.)*

"No 3, witness Suboor Putwa, was sleeping besides Sunker, with others in the verandah. The prisoner Gokul slept inside the house. About midnight Sunker cried out and then witness and others got up. It was cloudy and raining heavily that night; and they did not quickly understand what was the matter, but after a little found that Sunker Bhuggut and this prisoner Gokul were in the enclosure, and witness and his companions then surrounded them, and apprehended the prisoner, who had a sword and spear in his hands, which they took from him. Sunker Bhuggut then said bring a light and see who it is. The prosecutor brought a light, and they discovered that it was the prisoner. Sunker asked him why he did it, and prisoner replied, 'my fate was exactly this, what can I do.' Information was sent to the police, before whom also the prisoner confessed. Witness does not know the cause of the prisoner's act. He is quite sane. Sunker had jumped down into the enclosure.

"No. 5, witness Fukeera Bhat—Corroborates the foregoing. Witness has never seen the prisoner's sister.

"No. 6, witness Roopram Putwa,
,, 7, ,, Mugun Bhuggut,
,, 8, ,, Goburdhun Kahur,
,, 9, ,, Emambux,
—Prove the record of the examination of the wounds inflicted on Sunker Bhuggut. There were nine wounds.

"No. 10, witness Looma Putwa,
,, 11, ,, Jiba Kahur,
—Prove the confession of the prisoner before the police officer.

"No. 13, witness Doorga Singh—Proves the confession of the prisoner before the principal assistant.

" In the former of these confessions, the prisoner says, that he wounded Sunker Bhuggut, because he suspected that Sunker had advised Fukeera Bhat, about the prisoner's sister, Musst. Budnee. 1852. May 26. Case of Gokul Bhuggut.

" In the second confession the prisoner says, that he wounded Sunker Bhuggut, but was not in his right mind at the time, and that he has no enmity towards Sunker.

No. 15, Makoond Bhat—Corroborates the statements of Suboor and Fukeera.

" No. 17, witness Lukheeram Juswar,
" 18, " Rughoo Bhuggut,
" 19, " Dehul Bhuggut,
" 20, " Gooley Coomar,
" 22, " Persa Ghassy,
—These witnesses prove that Sunker returned to his home and died of his wounds in the month of Aghun, on a Wednesday, about ten or twelve days after being wounded, and that he had no other sickness but died of the wounds only.

" No. 23, witness Mahomed Khan, native doctor—Has attended the prisoner in hospital for a considerable period. The prisoner is of sound mind.

" The prisoner in his defence says, that he did not, to his knowledge, kill Sunker Bhuggut. Why should he kill him? Sunker never went abroad without having the prisoner in company. The Hoosur villagers will not give evidence for the prisoner. They are Sidharee Bhuggut's creatures, and will not speak for the prisoner. Mungul Singh Thakoor and Bhola Podar, and Debee Bora, and Goheeram Bhat, witnesses for the defence, are not in attendance. Mungul Singh knows that prisoner was out of his wits. The others can speak to prisoner's character, and that Sunker Bhuggut had colic.

" No. 24, witness Ramlall Bhuggut.—Seven years ago the prisoner had a gonorrhœa. Witness went to see him and he was then confused in his mind. Since then witness has never seen the prisoner—he bore a good character.

" No. 25, witness Dhunnoo Rawot.—About four or five years ago the deceased Sunker Bhuggut had colic and once a month vomited. When he returned from Hoosur to Kosmar, he had wounds on his head and had hiccup. He died thirteen days after being wounded. The prisoner is of good character. Witness cannot say whether deceased died of colic or the wounds. The prisoner has a venereal ailment. Witness knows nothing of his being mad.

No. 27, witness Khoodeelall Bhuggut.—To the same effect as Ramlall.

" No. 29, witness Pachoo Hajam.—One day in Aghun last, witness went to his brother's house in Kosmar, and at that time Sunker Bhuggut's family were weeping; therefore witness went

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in the evening to see Sunker, and saw that he was wounded and had hiccup and was vomiting. His family asked witness to give him some medicine, which he did. Sunker Bhuggut died next day. He had colic, and this caused hiccup. He died from the joint effect of the wounds and the colic. The prisoner has had venereal disease.

"No. 30, witness Bhichook Juswur.—The prisoner is of good character.

"No. 32, witness Domun Bamin.—The prisoner is of good character. Sunker Bhuggut had colic. Witness does not know of the prisoner's having been mad.

"No. 33, witness Nuffur Mookerjea.—The prisoner is of good character. Sunker Bhuggut had colic. The prisoner about five or seven years ago had a venereal ailment and his mind was affected. But after that he got well.

"The jury whose names are entered below* find the prisoner guilty of wounding only.

"I consider the prisoner guilty of wilful murder. The evidence to the fact is perfectly conclusive, and for the motive, the prisoner's statement before the police officer, that he suspected Sunker Bhuggut had given ill-advice respecting his, the prisoner's, sister, is sufficient. For though the suspicion itself be groundless, it is yet a suspicion that might influence the prisoner's mind. That such a bare suspicion could lead to an act so atrocious, it is difficult to conceive, but every day's experience shows that the motives of Asiatics are not to be judged by an European standard. The intention to commit murder may be inferred from the time chosen, and the number of blows inflicted. As to the prisoner's plea of insanity, there is nothing in support of it. Under all the circumstances of the case, in the absence of any known cause for the murder, looking also at the possibility of the prisoner having acted on some sudden impulse, the weapon used being not his own, but as it were by chance placed within his reach, I will only recommend that the prisoner be sentenced to imprisonment for life, with hard labor in irons in transportation beyond sea."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The facts of the case are these: The prisoner Gokul came with the deceased and several others to a house and slept there. It was a dark rainy night. In the course of the night the prisoner, who slept inside the house, took a sword and a spear, from inside the house, which belonged to the owner of the house, and with them went and wounded the deceased, Sunker, who was sleeping in the verandah, with others sleeping

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* Lalla Brijlal, *mookhtar*.
Sheikh Burruckutoollah, *mookhtar*.
Lalla Mita Lall, *mookhtar*.

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on each side of him. At the noise of the scuffle, the rest of the party woke and seized the prisoner with the sword and spear in his hands in the court-yard. The deceased had several wounds on him, but apparently none severe. The deceased asked prisoner, why he wounded him? and the answer was, that 'it was 'his fate,' or 'it was done now.' The deceased did not know who it was till they brought lights. I cannot find any cause of enmity between the two. The fact that deceased had given him advice, which he did not like, regarding the prisoner's sister, who was living with a tailor, appears to me not established. I put no faith in the thanna confession, which admits that fact. On the whole, the cause is unexplained; but the prisoner, no doubt, wounded the deceased; and there is no proof that the prisoner is of unsound mind, or that he was deranged at the time. On the other hand, there is no proof that the deceased died from the wounds. They do not appear to me calculated to kill him; and as it is in evidence that he had a disease (*sool*) and did not die till thirteen days after the wounding, I think the prisoner must have the benefit of the doubt. I convict the prisoner Gokul of wounding the deceased with a sword and spear, and sentence him to imprisonment for seven (7) years, with hard labor and irons."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

SREEMOTEE RAMLUTTA GUALINEE

versus

SREEDHUR CHUCKRABUTTEE.

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Case of SREEDHUR CHUCKRABUTTEE.

Culpable homicide by thumps and kicks. Sentence, five years' imprisonment.

CRIME CHARGED.—Culpable homicide of Bonomalee Hite Gualah, husband of the prosecutrix.

Committing Officer, Mr. S. Wauchope, magistrate of Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 1st May 1852.

Remarks by the additional sessions judge.—" On the 24th of March last, Bonomalee Hite Gualah caused a *tal* tree, which was growing near his own house, to be cut down. The prisoner lives as far off as a man's voice can be heard. He considered that the tree had grown on his property and came with six of his relations to the place, and having seized Bonomalee they dragged him away, and maltreated him as they went towards their own houses. When they had gone about ten or twelve *beegahs*, Bonomalee was so overcome that he died. His assailants then left him, and the prisoner is said to have been the last to do so. This prisoner was apprehended by the villagers before the arrival of the police. The body of the dead man was examined by the civil surgeon of the station, who deposed that a large quantity of blood was effused on the surface of the brain which was sufficient to have caused sudden death. The organs of generation also appeared to have been pulled. They were swollen and discoloured, and blood was effused around them, and this injury was decidedly not owing to disease. He also stated that severe injury to these organs frequently causes sudden death. The prisoner acknowledged before the police that he kicked and beat the deceased man, and before the magistrate he said that he and others seized him and dragged him a short distance, but that when he was left, he was urging others to attack the prisoner's party.

" After full consideration, I think that it is my duty to propose a more severe punishment than I could impose on the prisoner. The private parts had not received an accidental kick, but an injury deliberately inflicted on them, and in such a brutal manner when the man was in the power of his assailants. I therefore forward the case to your court, with a recommendation that the prisoner be sentenced to fourteen (14) years' imprisonment with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" It has been urged by Mr. Norris, the pleader on

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the part of the prisoner in this case, that there is no direct evidence of violence, of such a nature as to cause death, having been used towards the deceased, and that the prisoner is guilty only of a simple assault. The appearance of the corpse, as deposed to by the civil surgeon, however, indicated that death was caused by violence, and the evidence of the eye-witnesses proves that death occurred during the beating to which the deceased was subjected. The prisoner is clearly guilty of culpable homicide.

"From the evidence of one of the witnesses for the prosecution, it appears that the palm tree, the cutting of which by deceased was the cause of the quarrel, belonged to the prisoner; that his party took, however, no weapons with them when they went to the deceased's house; and that they only pulled, pushed and thumped him,—the prisoner now on trial having given him one kick in the privy parts, or in their neighbourhood. The circumstances as in evidence do not warrant the conclusion that the surmise of the surgeon with respect to the manner in which the injury to that part of his body was effected is correct. The case does not appear to me of so aggravated a nature as to call for the sentence proposed by the additional sessions judge.

"The prisoner is convicted of culpable homicide, and sentenced to five (5) years' imprisonment with labor without irons."

PRESENT:
SIR R. BARLOW, BART., *Judge.*

GOVERNMENT
versus
TYLAKHNATH MOOKERJEA.

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Case of TYLAKHNATH MOOKERJEA.

The prisoner convicted of misappropriation of money by breach of trust, and sentenced under the provisions of Act XIII. of 1850.

CRIME CHARGED.—1st count, fraudulently altering the account books of Captain Knyvett, Executive Officer, 2nd Division Grand Trunk Road, contrary to Section XVII., Act XIII. of 1850; 2nd count, unlawfully, knowingly, and under false pretences receiving rupees 1,000 from Nuwab Singh, late duffadar in charge of Government treasure, on the 10th March 1851, the property of Government, and not accounting for the same, and embezzling the same money, being a Government servant at the time, contrary to Section XIII., Act XIII. of 1850; 3rd count, theft of the same money.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 11th March 1852.

Remarks by the sessions judge.—"The counts on which the prisoner is arraigned are in conformity to Act XIII. of 1850, and Circular Order, No. 15, 12th December 1851. The question has been put on record by Captain Knyvett as to this act being restricted to *cestuique trusts;* but it is sufficient for me to observe, that nothing else is before me for my guidance beyond the plain wording of the Act itself, which by Section I. applies to 'every person employed in the public service of the East 'India Company, and entrusted by reason of such employ- 'ment, &c.,' and several decisions by the superior court during the past year. The prisoner was the head writer and chief subordinate to the Executive Officer's Office, of the 2nd Division Grand Trunk Road, and by reason of such employment jointly with Captain Knyvett, the Executive Officer, was in the habit of writing up the account-books connected with the treasure chest of the office, and has also occasionally held charge of the key of the treasure chest itself, as was undeniably the case, on the afternoon of the occurrence, on the 10th March 1851.

"For the particulars of the prosecution under trial, I beg to refer to the trial of Government *versus* Nuwab Singh, printed Decisions for July 1851, page 1012, Nuwab Singh's defence page 1014, including the pretence of the receipt, pp. 1014 and 1016, but with the solitary and singular omission to repeat the story of the 'identical rupees 1,000 having been taken there by 'Captain Knyvett himself in his buggy the next day the 11th 'March,' page 1014, which Nuwab Singh when questioned

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accounts for through obliviousness after such a lapse of time, constitutes the present prosecution. The calendar therefore now brings forward the *ci devant* prisoner Nuwab Singh as witness in chief No. 1. The two witnesses called in support of that defence, Gopal, then witness No. 6, now witness No 2, and Bunnoo then witness No. 5, now witness No. 3, followed by Bhikhary Pandy, witness No. 4, a person named as a witness before the sessions court on the former trial, but who then evaded process, and the tenor of whose testimony now is precisely the same as was given by Gopal and Bunnoo on the former trial, and now again repeated by them, ends with Captain Knyvett as witness No. 5; and the documentary evidence of the former trial, *viz.*, the account-book No. 4, and the account current with the treasure chest, as called for by the superior court and submitted under my letter, No. 146, of 5th July 1851, page 1019.

"The prisoner, principal witness of the former trial, pleads 'not guilty,' denies ever having received any money from Nuwab Singh in excess of rupees 3,578-5-1, comments on the gross improbability of Nuwab Singh having made good the small deficiency found in that amount for rupees 260, without alluding to the rupees 1,000, he alleges he had made over the same forenoon to the prisoner, and refers to the former trial in proof; accounts for the alterations and erasures in the account-books owing to Nuwab Singh's dictation, excuses them as common throughout the account-books, and as originating in Captain Knyvett, from time to time making use of public funds for his private purposes; rests on the authenticity of the account closed on the 10th March 1851, as unaltered, unerased, and partly written by Captain Knyvett himself, and charges Captain Knyvett with procuring this prosecution, consequent on counter charges he, the prisoner, had preferred against Captain Knyvett to Government in October last; in proof thereof referring to the contradictory nature of Captain Knyvett's several depositions, and of the present accusation compared to that originally lodged against him. He called witnesses before this court; whose testimony goes in support of the general facts of the case, which have continued unquestioned, either during the former or present trial, and to a matter unnoticed before, *viz.*, that the native accountant stationed at the Lilajun Bridge was in attendance on Captain Knyvett on the 10th of March with his accounts, and requiring a cash advance. That such was the practice Captain Knyvett admits in reply to the prisoner's interrogation as follows.

"*Question.*—'Were not your orders to the mohurirs stationed 'at the Lilajun Bridge to the effect that when they wanted money 'they were to come to the Head-Quarters, Sherghotty, and after 'giving in their accounts, such cash as was required they were to

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'take away. Accordingly on the 10th March did the said mohurir 'attend, give in his account, and apply for any cash or not?'

"*Answer.*—'Such were my orders; but I have no recollection 'of the mohurir's having attended on 10th March, and applying 'for cash. I believe he was there some few days previous.'

"At the least then, such practice was in force, which adds another proof to the fictitiousness of the pretence set up by Nuwab Singh, as to the prisoner's having taken the rupees 1,000 from him for such a purpose during the forenoon of the 10th of March, the counting of the money in the treasure chest, rupees 3,578-5-1, and the prisoner's temporary charge of it, let it be remembered, not taking place until the afternoon of that day.

"The *futwa* of the law officer, acquitting the prisoner on the first and third counts, convicts him on the second; thus upholding that expressed in his *futwa* of the former trial, page 1015, and leaves the degree of punishment in the hands of the authorities.

"Circumstances afford coloring to the defence set up by the prisoner. Captain Knyvett admits 'an inquiry is pending on 'charges preferred against him to Government by the prisoner, 'under a letter, dated 18th October last, though not posted 'until the 21st or 22nd, whilst his, Captain Knyvett's, complaint, 'was long before this.' Captain Knyvett's letter, No. 1, of the record of the present trial, is dated Gyah, 18th October last, and accuses the prisoner 'of having shared the cash with Nuwab 'Singh, and falsified the accounts kept in the office in order to 'conceal the crime,' and forwarding two witnesses in support thereof, Bhikhary Pandy, witness No. 4, and Lutchmun Singh. Bhikhary, witness No. 4, as already stated, has never deposed to anything of the kind, and when questioned about it by the prisoner before this court, after much hesitation and prevarication 'had no knowledge of it.' Lutchmun Singh has never been forthcoming, and is said to have refused to support the accusation, as above advanced in Captain Knyvett's letter of the 18th of October. A petition, bearing his name and the Hazareebaugh post mark of the 11th November last, was received by the magistrate on the 14th idem, accusing Captain Knyvett of endeavouring to suborn him to give such testimony. Captain Knyvett's deposition before the magistrate, 1st December 1851, No. 12, thus refers to these two witnesses. 'At that period if there 'had been no difference of opinion as to the legality of the pro-'secution, I was prepared to prove his guilt, and the witnesses 'were present, one of whom was examined by the Government '*vakeel*, Jineyut Hossein. I was desirous that he should exa-'mine the other also; but he gave it as his opinion that 'it was of no use, as they were both prepared to give the same 'statement,' and when questioned by the prisoner before this court, Captain Knyvett replied, 'Whether Nuwab Singh shared 'the money with you or not, I cannot say; but I was informed

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'so, and consequently wrote to the magistrate that such had 'come to my knowledge. If this really occurred it must have 'been after you had received the rupees 1,000 from Nuwab 'Singh, which does not affect in the least the fact of your having 'received the rupees 1,000, and not accounted for it to me, 'consequently I believe my accusations against you to be true.' Bhakhary's (witness No. 4) testimony, therefore, worthless for the same reasons as apply to witnesses Nos. 1, 2 and 3, stands doubly condemned by the foregoing circumstances, since it is impossible he could have been cognizant of the prisoner's first taking the rupees 1,000, as deposed to by himself and them at 10 A. M., of 10th March, and then afterwards sharing it with Nuwab Singh, without having been an accomplice; yet he, or any one else, has not been brought forward as approver. He, like the other witnesses, Nos. 2 and 3, is one of the treasury guards, a class of persons who on all occasions pretend the greatest punctiliousness towards their charge. It is possible, though not likely, that he might have been cognizant of the prisoner's taking rupees 1,000, under false pretences from Nuwab Singh, without immediately at the time seeing any criminality in such an act; but it is impossible he could have seen Nuwab Singh subsequently sharing the same sum of money after his dismissal, 11 A. M., that day, for it could have taken place at no other time; and continuing, as he and every one else has done, silent regarding it, being also witness to the counting of the treasure in the afternoon, without having been a *particeps criminis*. The three acts are condemnatory of each other, which will perhaps best account for this story having been abandoned. In any case, I find it impossible to regard these denials, admissions, omissions, and incongruities, in any other light than as seriously damaging the prosecution, even if nothing further remained in this respect to make it complete and final in the evidence of the witnesses Nos. 1, 2 and 3, since, as already shown, their testimony is identically the same as they gave during the trial of Nuwab Singh, and in the total absence of any new information, one circumstance alone being mentioned by Captain Knyvett that was omitted before, and that immaterial, as noticed below. My reasons for rejecting it are identically the same as those already published at pages 1015 to 1018 of that trial, every reason therein assigned being to the best of my judgment still further confirmed by what has subsequently happened. With this reference, I confine myself to citing the remark then made, page 1016, Nuwab Singh 'had 'no authority* to make over any money to Tylakhnath writer,

* Captain Knyvett's answer to the prisoner is, that he only recollects one single instance of his ever having given him authority to disburse money from the treasure chest.

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'nor has he anything to show for having done so; but even if 'he had, it is passing belief that Nuwab Singh would thus 'deliver up charge of his treasure chest on his dismissal, on the '10th of March last, counting out rupees 3,578-5-1 and leave 'this sum of rupees 1,000 put aside in another box only a few 'hours previous, uncounted and unnoticed on such an occasion. 'Both prisoner and his witnesses maintain unmistakeable silence 'as to Captain Knyvett's having been made acquainted with 'such an important matter, the concealment of which from him 'at such a time was of itself criminal,' and to observe that notwithstanding the opportunities Nuwab Singh has had between this and the former trial, to say nothing of the trial itself, he still continues unable to offer the slightest plausible explanation on the subject, when he assigns as the only motive for his silence, 'that he was in trouble with the gentleman, to whom he had no 'access, and to the denial (at variance to Captain Knyvett and 'every one else) of the counting having fallen short by the 'rupees 260.' Had there been the slightest truth in the excuse, that he could not on such an occasion approach the gentleman, the reasons would have become the more paramount for his taking his dismissal with every care and precaution, which it cannot be pretended was the case, when rupees 1,000 was thus left aside on such an occasion, unnoticed and uncounted, and a list of office furniture filed under the fraudulent pretence of an acquittance in full, pages 1014 and 1016. With this opinion of the evidence of the witness in chief and his fellows Gopal, witness No. 2, and Bunnoo, witness No. 3, declared by me 'worthless creatures,' page 1018, on the former trial, it is impossible for me to concur in the law officer's conviction of the prisoner on the second count; and, their evidence rejected, there remains nothing but presumption, too vague and weak in itself, and putting together all the circumstances attending this and the former trial still weaker for conviction. Acquittal on the third count also necessarily follows such finding. There remains for consideration the first count, in which I concur with the law officer for the following reasons:

"The former trial has already shown the informal nature of the account-books then, and now again, filed in support of the prosecution. None others exist; for, according to Captain Knyvett, there is only 'another book at present with 'Captain Loughton, the Officiating Superintending Engineer. 'The two books in court are the rough books from which 'the one with Captain Loughton is prepared monthly' which is the 'formal official book, and has at the end of the monthly 'account as follows '(signed) F. Knyvett, Captain, but it is 'not my actual signature. It is not the practice, that I know 'of in our offices to do so.' Thus the acknowledged rough

account-books in court are the originals of the professing official copy, yet of which they cannot be said to be counterparts, inasmuch as public and private accounts are mixed up together in these rough account-books, which also bear no official signature. Such serious informality, more especially in the absence of other proof, is sufficient of itself to vitiate any commitment under Act XIII. of 1850, as providing only for formal trusts and accounts. But even overlooking such estoppel, further inquiry does not mend matters, but only tends to support the same principle, *viz.*, that the omission of such formality in practice itself creates the very same result. These account-books have been kept, as their titles indicate, in the very roughest manner. Both erasures and alterations in other places are frequent. Accordingly there was nothing of itself in the prisoner's making the alterations or erasures he stands charged with in books of such a character, to constitute any thing unusual, uncommon, or unlawful, so as to mark the act as in any degree criminal; and in the absence of other proof, and the existence of other exceptionable irregularities, the prisoner is entitled to the benefit of his plea, that the mistakes occurred through Nuwab Singh's dictation, and which, having been the acknowledged practice of the office, may have been possible, and cannot by itself alone prove such alteration to have been criminal. The only information brought forward by Captain Knyvett during the present trial, which has not already been considered in the former one, becomes just as valueless, owing to the very same kind of remissness, leaving it altogether indistinct where personal responsibility begins, or where it ends. Captain Knyvett deposes the balance brought down, from January account to February credit is rupees 1,131-0-11, and amounts of the drafts Nos. 36 and 37 for rupees 1,000 each, were received from the collector on the 3rd February. No more money was again received from the treasury until I think about the 14th. This appears to have been the case according to a letter of the Gyah collectorate, No. 1227, 3rd March 1851, filed by Captain Knyvett, who continues.—'Now the expen-'diture up to the 12th, which is all written in my own hand, '(with the exception of the two first items) shows rupees '3,090-0-6, and the credit side, if it had not been erased, would 'have been rupees 3,251-0-11; whereas it is now only rupees '2,231-0-11, which shows an excess of expenditure over receipts 'of rupees 758-15-7, besides some small sums, &c.' It is thus Captain Knyvett explains that the 'disbursements show that 'Nuwab Singh had accounted for both these drafts,' and when asked to explain how such circumstances were overlooked in the prosecution of Nuwab Singh, replies, 'It never occurred to me 'to examine the expenditure separately, and very probably,

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'I should not have thought of it now, had it not been brought to 'my notice by Nuwab Singh, who requested me to examine the 'book and see if it were not so.' Had credits and debits been regularly written up from date to date, some dependence might have been placed on such results, and the prisoner's irregular responsibility would have been somewhat clearer, though for all that Nuwab Singh's personal and direct responsibility on 10th March 1851 is not thereby in any degree diminished. But the accounts have been kept in too irregular and imperfect a shape, and under too lax a system, to warrant any inference therefrom, that the prisoner, when making the alteration under trial, possessed guilty knowledge of the two drafts having been disbursed by Nuwab Singh prior to the 14th of February, and to more money having been received from the Gyah collectorate. Each item on the credit side of these accounts, both for February and March, bear no date, and Captain Knyvett himself admits that 'I believe February's account in this book was balanced on 'the same day, *viz.*, 10th of March, by the prisoner, and he 'brought down from that month a balance less by rupees 1,000 'than he ought to have done, and I, only satisfying myself as 'to March's balance, failed to detect then the deficiency in 'February.' The account-book itself, therefore, notwithstanding that the disbursements date by date, both for February and March, are written by Captain Knyvett, is wanting in the internal proof it ought to possess as to when these items to credit, both for February and March, were entered therein, prior to the 10th March, on which date alone there is any certainty in this respect, from the balancing then made by Captain Knyvett himself, and to which, as will be now seen, he was an active party. All the entries on the credit side for March are in Captain Knyvett's own hand-writing, though he is not certain as to the figures opposite each, yet three of the same entries, two in ink and one in pencil, and all the figures forming the same total, rupees 4,965-7-1, are acknowledgedly repeated above in the same page in his own hand-writing with the pen run through them. It may be said that, as head writer, it was the prisoner's duty, by reason of such employment, to see that the credits were faithfully and regularly posted; nothing of the kind is in evidence, but the contrary. For, as already stated, no other practice appears to have been in vogue than that of Captain Knyvett, or the prisoner's writing up the accounts from the treasurer Nuwab Singh's dictation, which the treasurer is said to have been in the habit of doing without filing any accounts of his own, and as admitted by Captain Knyvett, the February accounts were not balanced until the 10th March, and then without date to any of the credit items either for February or March. If criminality is to be presumed from neglect only, then it must not be for-

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gotten also that it is apparent on both sides. How can the subordinate be held responsible on such grounds alone, when the head of the office himself entered the February balance to credit in March without testing it, or even looking at the February account immediately above it, although the items to credit, both in February and March, were so trivial as to consist only of six lines each? Had Captain Knyvett turned over the leaf, the alteration or false statement under trial would, on the 10th March itself, have been palpably before his eyes, as the entries dependent on such false statement, balanced and closed on 10th of March, are altogether free both of erasure and alteration. In as far as presumption is derivable from such circumstances, they are rather favorable than otherwise to the prisoner, who must have risked every thing a *l'outrance* thus knowingly and fraudulently to have put such a false statement before his superior, which a single glance of the eye, and the commonest recollection of such trivial transactions could not have failed to detect, and mar at once. Had the preparation of these rough account-books been in the prisoner's sole charge, and been formally and regularly written up, and for which, by reason of his employment, in such case, he might have been held personally responsible, such circumstances would have had due weight, but as I have shown the very reverse to have been the case, I cannot find that the conditions of Section XVII. of the Act are applicable to the prisoner; for it cannot be said that he thus knowingly 'made up 'or furnished a false statement,' when Captain Knyvett himself adopted it, by writing in its February balance to credit with the other items to credit in March, all in his own hand-writing, or according to my view of the prosecution, 'for a sum of money,' which manifestly could neither 'have been received nor paid by 'him, or entrusted to his care, or a balance of money in his 'custody or control' by reason of his employment as head writer, prior to the noon of 10th March 1851. According to the prosecution, however, much suspicion alone, looking to the alterations of the accounts and their resulting in undoubted corresponding deficiency, yet too weak for conviction, may extend to his having aided and abetted its trustee, Nuwab Singh, in making away with it, the only crime it was in his power to have committed under all the circumstances of the case, but at the same time an offence altogether distinct from, and at variance to, the counts on which the prisoner stands arraigned, the evidence brought forward in support of them, and to Nuwab Singh's *autrefois acquit*. I am consequently of opinion that the prisoner is entitled to his acquittal on all the counts contained in the indictment."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoner was committed to the sessions

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court on the charges exhibited in the calendar, and was acquitted by the sessions judge for the reasons assigned in his letter of reference, dated the 29th March last.

"I annex my judgment* in the case of Nuwab Singh, disposed of on the 30th July 1851. In that case, it will be seen that the prisoner, head writer of the Executive Engineer's Office at Sherghotty, was the principal witness against Nuwab Singh,

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* "The prisoner Nuwab Singh is charged, under Act XIII. of 1850, with embezzlement of rupees 1,000, being public money entrusted to him as a public servant, between the 4th February 1851 and 10th March idem.

"The prisoner admits having received rupees 2,000 in February from the Behar collectorate in lieu of two drafts, which he says be placed in the Treasury then under his charge. The prisoner was a duffadar under Captain Knyvett, Executive Officer, 2nd division of the Grand Trunk Road, and was dismissed by him on the 10th March when the accounts and treasury were made over to Tylakhnath Mookerjea, the head native writer, who on the 1st April reported in his letter to the executive officer 'that he, the writer, had given two drafts, on the 3rd February 1851, to the said Nuwab Singh, duffadar, lately discharged, the numbers 'of the drafts were 36 and 37 of 1850 and 1851, dated 9th December 1850. The duffadar had only credited rupees 1,000 in his accounts, 'instead of rupees 2,000.' He proceeds 'as my time was entirely occu'pied with the heavy works of my office, in consequence of there being 'one writer short, I could not make out the accounts for that month on 'as early a date as I always do, but having found the mistake, I immediately forwarded my report, dated 30th March 1851, on the subject to 'meet you at Sasceram.'

"The prisoner was on this discovery apprehended on the 15th April and committed to the sessions on the 26th idem.

"It is unnecessary to advert to the evidence of the *umlah* of the collectorate of Behar further than to observe that it proves the payment of rupees 2,000, as alleged, to the prisoner, who also acknowledges the receipt of that sum.

"The prosecutor, Captain Knyvett, deposes the entries in the accounts for February and March 1851, were made by the head writer Tylakhnath; that there are erasures in the books referring to the drafts 36 and 37 and the money realized upon them from the collectorate; that he never gave the prisoner a clear acquittance; he supposes he gave him a receipt for rupees 3,578; that on examining the accounts on the 10th March, he found rupees 260 short, and on the following morning it was made good.

"Tylakhnath, the head writer, deposes, that on the 3rd of February 1851, he gave two drafts to the prisoner for rupees 1,000 each. The prisoner credited only rupees 1,000; that he gave the accounts ten or fifteen days after his return from the Gyah collectorate; he, witness, did not at the time remember the two drafts, and credited rupees 1,000 only in the account. At the end of March he closed it. Being questioned as to the erasure in the item, rupees 1,000, he admits it, and says the item was originally rupees 120; being told the explanation was not satisfactory as the figure 1 was also erased, he is unable to give an answer; he further admits the treasury was made over to him on the 10th March and on the prisoner's dismissal, he, the witness, made the expenditure, wrote the accounts and Captain Knyvett signed them.

"The documentary evidence consists of two account-books in English, and the head writer's letter of the 1st April.

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who was acquitted by the court of unlawfully and fraudulently embezzling the sum of rupees 1,000, the same being public money entrusted to him.

"On his acquittal, the Executive Engineer, Major Knyvett, made further inquiries as to the abstraction of the above sum, the result of which is the commitment of the prisoner Tylakhnath Mookerjea, for fraudulently altering account-books of the Executive Officer, and of unlawfully, knowingly and under false pretences receiving rupees 1,000 from Nuwab Singh, late duffadar in charge of Government treasure, on the 10th March 1851, the property of Government, and not accounting for the same, and embezzling the same, &c., being a Government servant at the time.

"The reasons recorded in my judgment in the case of Nuwab Singh, and the details in that judgment, throw the strongest suspicion upon the prisoner Tylakhnath. In the course of his trial, the deposition of Nuwab Singh and Gopal Singh, Bunnoo Pandy and Bhakhary, who were his witnesses, have been taken *de novo*, and the account-books which were in the first trial have also been produced in this.

"The prisoner Tylakhnath admits that he had charge of the treasure from the date of Nuwab Singh's dismissal, the 10th March. It was not till the 1st April, that he reported to Major Knyvett the deficiency of rupees 1,000 in the treasury. He had no time to report it earlier, as his hands were full of business, he did not at the time remember the two drafts for

"These accounts written, as admitted, by Tylakhnath, are erased throughout in every account connected with the receipt of the rupees 2,000. The erasures are numerous and the books appear to have been kept without any regard to formality.

"The fact, however, of the prisoner having been discharged on the 10th March; of the accounts for February and March having been written at the end of the last month by Tylakhnath; the fact also, that the treasure chest was made over to him on the prisoner's dismissal, and that from that date the expenditure was made by him, together with the very questionable evidence given by the said Tylakhnath at the trial, and the very unsatisfactory state of the erased accounts; all these circumstances, in my opinion, tend to throw great doubts on the prisoner's criminality, and justify his acquittal. He was not apprehended till the 15th April, when the witness Tylakhnath had long been in possession of the accounts which he wrote himself, and had been holding the office from which the prisoner was dismissed.

"No conviction can be safely founded on such documents in support of which the chief witness is the writer, who himself made the erasures apparent on the face of the accounts. The forgetfulness of this witness, in the matter of the two drafts for rupees 2,000, sent to the Behar collectorate, rupees 1,000 of which were only paid in by the prisoner, as alleged, is very remarkable. The erasure in the entries seems to indicate a degree of deliberation which should have evinced greater accuracy in the accounts. No weight being attached to the writer's deposition, which is the chief evidence against the prisoner, the prosecution fails. The prisoner is acquitted and must be released."

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rupees 1,000 each, he had given to Nuwab Singh to cash, and credited 1,000 only in the books. The whole of the prisoner's evidence against Nuwab indicates that he, Tylakhnath, was the real offender, and tried to convict the man who was released.

"The witnesses for the prosecution tell the same tale they told on the occasion of the first trial. Nuwab Singh, too, has adhered to his story consistently; this evidence and the prisoner's own admissions on the former trial, fully bear out the prosecution and justify the prisoner's conviction. The prisoner was left by Major Knyvett at about 5 P. M., (10th March), who went off to take an airing, having first thought the prisoner counted the sum of rupees 3,578, and desired him to take account of all the money in the hands of Nuwab Singh. It does not appear that Major Knyvett again examined the treasure chest or took any means to ascertain what had been recovered from Nuwab Singh on the day of his dismissal, the 10th March 1851, and what amount was in the treasury after it was on that date then and there made over to Tylakhnath. It is quite incredible that Tylakhnath should have deferred, as he says he did, making up the account-books to the 30th March 1851, and that he should then have written them off as alleged at the dictation of Nuwab Singh. It is much more probable, as Tylakhnath admits the books to be in his hand-writing, that the entries were regularly made in them, and that he availed himself of Nuwab Singh's dismissal to make away with rupees 1,000, and subsequently altered those entries in order to cover the deficiency. He was not called upon to account for the treasure in his charge periodically and strictly as he ought to have been, and could not withstand the temptation to which he was exposed by the continuance of the untold amount in his possession.

"In his defence he denies all the charges on which he stands committed. He named six witnesses, of whom Juddoonath, his own brother, Bishenchunder Bhotacharge, a friend, are altogether silent as to the rupees 1,000 upon which the prosecution is founded. They speak of the counting over and receipt of rupees 3,578 by the prisoner and Major Knyvett on the 10th March 1851. Juddoonath swears that the Major, who had counted the money, locked it up, but he cannot say with whom the key remained.

"Bishenchunder, on the contrary, swears that the prisoner, who had locked up the money, gave it and also the key to Major Knyvett on the following day.

"Chutter Singh, another witness cited by the prisoner, says he is acquainted with the prisoner, but knows nothing of the matter before the court.

"Durbaree Lall and Koylaschunder also named, are reported by the *nazir* not to be found. But little reliance can be placed on accounts erased, altered and interlined as these palpably are;

but the prisoner's admissions of alterations in his own hand-writing, while he was in charge of the treasury and made all disbursements, his most unaccountable and unsatisfactory obliviousness with regard to the entry of rupees 1,000 cash only, when he gave drafts on the collectorate for rupees 2,000, which he endeavours to explain by press of business, coupled with the signal failure to establish anything favorable to him in his defence, create in my judgment a strong presumption of his guilt; the more so, as there is the evidence of Bunnoo and Gopal on the record, that he did take back from them the rupees 1,000, given to them by his order, to take to the works at Lilajun Bridge. The deficiency is to the extent of rupees 1,000 only, and whether the prisoner took that sum at once when returned as just mentioned, or whether he drew it from the treasure chest after he was put in charge on the 10th March from the rupees 3,578 deposited on that date, is immaterial.

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"The prisoner was, as he admits, from the 10th March in charge of the Government Treasury belonging to the office of the Executive Engineer, Major Knyvett. The evidence on the record and the circumstances of the case afford the strongest presumption that he has embezzled or fraudulently applied to his use the rupees 1,000, or some part thereof for a purpose other than the purpose to which the same was applicable under the trust reposed in him. I therefore convict him and sentence him to two (2) years' imprisonment without irons or labor."

PRESENT:

SIR ROBERT BARLOW, BART., *Judge.*

HURREENATH MOOKHAPADHYA

versus

CHUNDER GHOSE (No. 31), NUFFER CHAMAR (No. 32), BONOCHAREE GHOSE (No. 33), MOTHOOR GHOSE (No. 34) RAMGUTTEE CHAMAR (No. 35) AND GRIDHUR GHOSE (No. 36).

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May 31.

Case of CHUNDER GHOSE and others.

The prisoners convicted of dacoity, on the recognition of the witnesses for the prosecution.

CRIME CHARGED.—Dacoity at the house of the prosecutor's uncle Ramdhun Gossein, and plunder of property therefrom to the value of rupees 157-8-0, on the night of the 28th November 1851, corresponding with 13th Aghun 1258.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. F. L. Beaufort, magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 19th March 1852.*

Remarks by the sessions judge.—" From the evidence for the prosecution and the confession of the prisoner No. 31, before the police and before the magistrate, it is proved that about eighteen dacoits armed with clubs, attacked the house where prosecutor lives, and plundered his property. They had lighted torches. The prisoners were recognized by different witnesses, as well as by the prosecutor, who was knocked down by one of the dacoits with a club. Witness No. 7 was also wounded. Prisoner No. 31 confessed before the police and before the magistrate. Prisoners Nos. 32 and 35 have been before committed for trial for dacoity.

" All the prisoners plead 'not guilty' at the sessions; but their excuses are not proved. I therefore convict them of the crime charged in the calendar, *viz.*, dacoity, and sentence each of them to be imprisoned for fourteen (14) years, with labor in irons in banishment.

" I tried the case under Act XXIV. of 1843."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart)—" The evidence in this case consists on the part of the prosecution of that of several eye-witnesses, to whom as well as the prosecutor the prisoners were previously known. The defence fails altogether. I see no reason to interfere.

" The petition is rejected."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

RAMDHUN DASS MARWARI

versus

BHOWANIPERSHAD (No. 8) AND GUNGA (No. 7).

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Case of BHOWANIPERSHAD and another.

The sentence passed by the sessions court, on a conviction of fraud, affirmed on appeal

CRIME CHARGED.—1st count, embezzlement of property valued at rupees 1,135; 2nd count, fraud in obtaining possession of property; 3rd count, knowingly receiving this property; and 4th count, burning receipt-books, the property of the prosecutor, from which cause the business of the prosecutor is much injured.

CRIME ESTABLISHED.—Fraud in obtaining possession of the prosecutor's property.

Committing Officer, Mr. W. T. Tucker, officiating magistrate of Patna.

Tried before Mr. G. Gough, commissioner of Patna, with powers of sessions judge, on the 9th January 1852.

Remarks by the commissioner.—" The particulars of this case are as follows :—

" The prosecutor, who is an itinerant merchant, went to Bettiah in the month of Assar last, and left his shop in charge of a gomashta, named Soojairam. During his absence his son remitted the sum of rupees 901 to Patna, which was delivered to the gomashta in consequence of the prosecutor's absence. Shortly after this the two prisoners, who were neighbours, went to the gomashta, who appears to have been a credulous and weak-minded man, and persuaded him that there was a suit in the civil court against the prosecutor, and an order issued for the attachment of his property, which they induced him to entrust to them with the view of avoiding the attachment. By this false representation, they fraudulently obtained possession of the rupees 901, above alluded to, and other property belonging to the prosecutor. When the prosecutor returned to Patna, he became acquainted with the above circumstances, and demanded the restoration of his property, which the prisoners refused, on the plea of its having been pledged to them on account of rupees 130, which they alleged they had lent to the prosecutor. It is proved by clear evidence that the prisoners fradulently obtained the property as above narrated. The prisoner Bhowanipershad urged in his defence that the prosecutor was indebted to him to the amount of rupees 130, and that the prosecutor's gomashta made over the property to him by way of security. This, however, is not proved; neither is it shown that he ever lent the prosecutor the sum of rupees 130, for which he could produce no acknowledgment. The other prisoner Gunga, who is

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the brother of Bhowani, and was subsequently apprehended, simply denied the charge. The law officer convicted the prisoners on the charge of fraud in obtaining the prosecutor's property; and in concurrence with his finding, I have sentenced both the prisoners to three (3) years' imprisonment, and a fine of rupees fifty (50) each, and to labor if the same was not paid within one month."

Remarks by Nizamut Adawlut.—(Present: Mr. A. J. M'. Mills.)—"The guilt of the prisoners is clearly established. The excuse of the prisoners is evidently false; it is not likely that a respectable merchant would pledge his body clothing; and from the attempt to burn the books and some of the articles of clothing, it is evident they were not pledged. I see no reason to interfere with the sentence and finding of the commissioner."

SUMMARY CASES.

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

BULLYE TUMLEE

versus

CHEEDAM KHYRA.

1852. May 5. Case of CHEEDAM KHYRA.

A magistrate is incompetent to pass sentence on a conviction of arson, that is of setting fire to a house within the meaning of para. 2, of the Circular Order, No. 13, of June 5th, 1848.

Arson and incendiarism are not offences, the penalties of which are within the scope of Section II., Regulation VI of 1824. That section refers to convictions and sentences for *burglary and theft.*

CRIME CHARGED.—1st count, arson; and 2nd count, theft of property valued at rupees 1-11-6.

This case was referred, under Section V., Act XXXI. of 1841, and Circular Order, dated 18th March 1842, by the sessions judge of West Burdwan, with the following report, dated 19th April 1852:—

"The prisoner was caught in the act of stealing in the house of prosecutor No. 2, after having (as he stated in his confessions made before the police and officiating joint magistrate,) set fire to the house of prosecutor No. 1, at the request of a certain Cheedam Koloo, of which allegation he could produce no proof.

"The officiating joint magistrate found him guilty of both crimes, upon his own confessions and the evidence of witnesses to his apprehension, &c., but did not make him over to take his trial before the sessions court for each offence, under Clause 3, Section II., Regulation VI. of 1824, and in accordance with the Circular Order, No. 13, of the 5th June 1848, as he ought to have done, because no previous acquaintance or quarrel with the person whose house was burnt had been proven against the prisoner, and it did not appear to him that the fire had taken place in consequence of any violent or oppressive conduct on his part. He added, in his *roobukaree*, that though a considerable amount of property had been destroyed in the fire, he did not consider the case one of those which was intended by the Circular above quoted to be committed to the sessions.

"As I cannot but dissent from the opinion expressed by the officiating joint magistrate in regard to this case, I have considered it my duty to report it to the court, with a recommendation that that officer be directed to commit the prisoner to take his trial before the sessions court, for each offence, in such a manner that the lighter case may be tried immediately after the heavier one.

"I beg to add that the officiating joint magistrate could not, in my opinion, legally inflict the punishment of two and a half (2½) years' imprisonment for arson and theft together, under Regulation VI. of 1824, because he had not the power to award that period for a case of arson not referrible to the sessions court, under paragraph 3 of the Circular Order, No. 13, of the

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5th June 1848, and Section XIX., Regulation IX. of 1807. Moreover, a part of the punishment awarded must have been in lieu of stripes for the theft; but the commutation has not been alluded to in the officiating joint magistrate's final proceeding, which does not distinctly state how much of the imprisonment was to be for the arson, and how much for the theft.

"Copy of this report has been sent to the officiating joint magistrate, for any explanations he may have to offer, in accordance with the instructions contained in Circular Order, No. 9, of the 17th July 1851.

"The officiating joint magistrate's letter* of explanation, this day received, is forwarded herewith in original with marginal remarks."

From the Officiating Magistrate to the Sessions Judge of West Burdwan, No. 132, dated 20th April 1852.

"I have this evening received your letter, No. 75, of to-day's date. I expect to give up my office to my successor to-morrow morning. I have not time to go through the papers, but as I have a strong remembrance of the case as well as my old notes to help me, I shall reply, as I am able, to your question.

"I found the prisoner Cheedam Khyra guilty of arson, and of a petty theft committed on the same night in two persons' houses, the latter during the confusion* ensuing on the former. Upon the record of the latter case (theft,) I signed an order under Regulation VI. of 1824, Section II. Clause 1, that when the proceedings in the arson were concluded, the two cases would receive the proper orders together.

"On concluding the arson case, it remained for me to use my discretion whether, under Circular Order Nizamut Adawlut, No. 13, of June 5th 1848, I should or should not commit the party to the sessions for the *arson*. I am happy that I can say it was not till after very deliberate and careful consideration that I came to a conclusion; for in judging the point, it was necessary to note whether there were any, and if so what, circumstances to operate in the prisoner's favor, and I found two, *viz.*, that there was not the smallest suspicion in the case of any malicious† feeling on his part; neither, it seemed, did the prosecutor suspect it; and next, that though he confessed to the deed, his confession was a qualified one: he had been told to do it by another (he said); and though it is very true he could not *prove* this point, yet from the papers it appeared to me not improbable, as some ill-feeling seemed to exist on the part of Cheedam Koloo against the prosecutor. Be this as it may, it was reasonable to

* *Note by the Sessions Judge.*—The prisoner confessed having set fire to the house of prosecutor No. 1, and as he immediately thereafter began to steal in the house of prosecutor No. 2, and could not prove that he had really been instigated by Cheedam Koloo, the presumption is strong, that he set fire to the house for the sake of creating the confusion, of which he immediately availed himself, the alleged instigation being a mere invention, aimed at diminution of his probable punishment.

† *Note by the Sessions Judge.*—As the prisoner could not prove instigation on the part of Cheedam Koloo, and it is unquestionable that he commenced thieving in the house of prosecutor No. 2, immediately after having set the house of prosecutor No. 1 on fire, the most violent presumption arises, of most malicious intent. The prisoner's malice was treble distilled, for after having most wickedly destroyed the property of one man, to enable him to prosecute his designs against that of another, he attempted to fix the blame of the foul deed upon a third.

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Resolution of the Nizamut Adawlut, No. 621, dated the 5th May 1852.—(Present: Mr. J. R. Colvin.)—" The court, having perused the above papers connected with the case of Cheedam Khyra, observe that, as the first charge and the conviction on it were of *arson*, that is, of setting fire to a house within the meaning of paragraph 2 of the Circular Order, No. 13, of June 5th 1848, the officiating joint magistrate was clearly incompetent to pass sentence in the case, as it regarded that act. Wilful arson, of course, implies a malicious intent. The officiating joint magistrate's conviction and sentence are therefore quashed, and he will proceed to the commitment of the prisoner, if he should think that there are grounds for it, on the charge of arson.

" Arson and incendiarism, it is to be observed, are not offences, the penalties of which are within the scope of Section II. Regulation VI. of 1824. That section refers to convictions and sentences for burglary or theft.

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give the prisoner benefit of the doubt. It then remained to consider whether the mere circumstance of the value* of the property, as alleged by the prosecutor, took the case out of my hands or not; and in the exercise of the discretion allowed me, and viewing all the circumstances of the case, I deemed that the punishment I was competent to give under Section XIX. Regulation IX. of 1807 was sufficient.† A malicious‡ setting fire is necessary to constitute arson; perhaps, I should not have so turned it if I had found *Cheedam Koloo* guilty of the *instigation*, then I should have committed the case.

" It then remained for me to determine how the theft case should be disposed of. I considered the conviction in arson a conviction in a heinous offence; and I passed my final order of two and a half (2½) years' imprisonment, (one sentence) under the orders contained in Regulation VI. of 1824, Section II. Clause 2, for the two offences. My not mentioning a further half year 'in lieu of stripes,' was, I think, wrong.

" There is one point in the Circular Order, No. 13, of 1848, which it has struck me. I possibly overlooked the Clause, ' or if the act is accompanied by other aggravation.' Had I noted this more particularly, I might have committed it.

" I am sorry my proceedings should have met with your animadversion; and hope my explanation will be considered satisfactory as to the reasons thereof."

* *Note by the Sessions Judge.*—I think it was between four and five hundred rupees, but the *nuthee* is not here.

† *Note by the Sessions Judge.*—The officiating joint magistrate has overlooked the fact, that he could not have given more than six months, under the Regulation and Section he cites, for a case of arson not referrible to the Nizamut Adawlut.

‡ *Note by the Sessions Judge.*—I do not take the word 'malicious' in the same sense as the officiating joint magistrate does. The prisoner had, it is true, no apparent private malice against prosecutor No. 1, to instigate him, but his act was *most malicious as against society.*

The Circular Order, No. 13, of the 5th June 1848, evidently construed the word as I do, for a man burning down a village, or a town, may not know a soul in it, but the mere act of his deliberately setting the same on fire, argues, and must argue, malice against society.

1852.

May 5.

Case of CHEKDAM KHYRA.

"The charge of theft in this case should be tried after that of arson has been disposed of. There would be no objection to its also being sent for disposal to the sessions court, as there is the aggravation of the theft having been committed during the confusion caused through the burning by the prisoner of the house of the first prosecutor."

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

GUNDOUREE KHAN

versus

DEYANAUTH RAEE'S SERVANTS.

1852.

May 27.

Case of DEYANAUTH RAEE'S SERVANTS.

It is irregular in an inferior criminal court to decide a case, turning on the right to possession of land, when it is brought to its notice that another case, under Act IV. of 1840, regarding the same subject-matter, is at the time pending before the magistrate.

In such cases, if there be any matter for investigation as regarding the plunder or abstraction of property, not the produce of land and necessarily connected with the disputed possession of land, this must be the subject of a distinct complaint, which may most properly be disposed of after the questions falling under Act IV. of 1840, have been disposed of.

THIS case was referred under Section V., Act XXXI. of 1841, and Circular Order of the 18th March 1842, by the sessions judge of Behar, with the following report dated 7th May 1852:

"One Gundouree Khan prosecuted Deyanauth Raee's servants for sneaking into the Errkee *cutcherry*. Moulvee Abdool Kadir, the law officer, in his decision of 4th March last, grounding his opinion on the right of possession between the parties, fined Deyanauth Raee for such an offence rupees 25, as the principal under whose orders his servants must have acted.

"Deyanauth appealed to this court; and one of the grounds of appeal is, that the possession of Errkee was at that time pending trial before the magistrate under Act IV. of 1840.

"The magistrate's proceedings of 29th ultimo show that the Act IV. suit referred to was instituted by Deyanauth on 17th February last, and had not up to that date been brought to a hearing, witnesses being summoned so late as 25th and 29th March last. Deyanauth's plea before the law officer No. 11, also noticed the fact of such suit being pending at that time, and of which the law officer's decision took no notice.

"It is impossible for me to uphold the law officer's decision or reject the appeal, as the former rests so entirely on an opinion as to possession, that very possession being then, and still continuing *sub judice* in the Magistrate's Court. Act XXXI. of 1841 places the order itself out of my competency, but the proceeding itself is so faulty and adverse to what is still pending in court, that no alternative is left me than to submit it to the superior court's consideration for reversal, agreeably to Circular Order,

1852.

May 27.

Case of DEYANAUTH RAEE'S SERVENTS.

No. 106, 18th March 1842, and Circular Order, No. 9, 17th July 1851.

"The law officer, in his proceedings of 29th ultimo, explains that his decision of 4th March last was passed when the magistrate was absent in the interior, and that he is not vested with the authority to transfer such matters for trial under Act IV.; that he placed no reliance on the statement in the plea relative to the same cause of action being at that time pending investigation under Act IV., it being usual for parties to make formal representation to such effect in such cases, and which Deyanauth's attorney neglected to do in the present instance. I do not regard this explanation as altogether satisfactory. Better provision should obtain in the magistrate's office to render such an irregularity impracticable. It solely arises out of a practice I have had occasion to note more than once, of some complaints of dispossession being treated as too trivial for trial under Act. IV. and disposed of at once under miscellaneous proceedings; whereas, were such matters strictly and invariably decided under the provisions of Act IV., as I consider they ought to be, no irregularity of the kind could happen, nor would there be any assumption of power indirectly which, as in the case of the law officer, if directly taken, would have been illegal. The practice itself to some extent holds the law officer excused. I must at the same time do him the justice to remark that he is an able, painstaking, zealous officer, whose proceedings generally evince great caution and regularity."

Resolution of the court of the Nizamut Adawlut, No. 704, dated 27th May 1852.—(Present: Mr. J. R. Colvin.)—"The court, having perused the papers above recorded, observe that it was certainly irregular in the law officer to proceed to a decision in this case, when another case under Act IV. of 1840, regarding the same subject-matter, was at the time pending before the magistrate. On the statement made in the defence of the *mookhtar* of Deyanauth Raee and others, that there was such a case before the magistrate, it was the duty of the law officer to make inquiries on the point on his own part.

"His order of the 4th March last, imposing a fine of rupees 25 on Deyanauth Raee and Jykurn Lall, is therefore reversed, and the amount will be returned to those parties.

"In such cases, if there be any matter for investigation, as regarding the plunder or abstraction of property, not the produce of land and necessarily connected with the disputed possession of land, such matter must be brought forward in a distinct complaint, and is most properly to be disposed of after the questions falling under Act IV. of 1840 have been decided."

CASES

IN THE

NIZAMUT ADAWLUT.

PRESENT:

A. J. M. MILLS, AND R. H. MYTTON, ESQRS., *Officiating Judges.*

GOVERNMENT

versus

JOODHOMONEE (No. 3), SHANTE RAM (No. 4), RAJEEHA REAUG (No. 5), OLIHAM REAUG (No. 6), DARIA HAJRA (No. 7), GOOMAIAH REAUG (No. 8), PAUJEHAM (No. 9), CHUNDROMONEE SIRCAR (No. 10) AND KALLINJOY (No. 11).

1852.

June 1.

Case of JOODHOMONEE and others.

Wilful murder or human sacrifice of three Kookies by a tribe of Reaugs in Chittagong. Sentence, death on the principals and transportation for life on the accomplices. Two prisoners acquitted for want of proof.

CRIME CHARGED.—1st count, wilful murder of Khobatima, Peejung Bulfoo, Chondrya, Pudda, and six other Kookies, men, women and children, whose names are not known—altogether eleven individuals; 2nd count, accessaries before and after the fact; 3rd count, firing on and severely wounding Fetto Roy *alias* Pytuck Sha, with a gun loaded with slugs, with the intention of murdering the said Pytuck Sha; 4th count, aiding and abetting Kallinjoy in the above crime; and 5th count, firing on the officers of police with powder and ball, with the intention of murdering them.

Committing Officers, Messrs. F. Lautour, and F. B. Simson, magistrate, and officiating magistrate of Chittagong, respectively.

Tried before Mr. S. Bowring, officiating sessions judge of Chittagong, on the 29th March 1852.

Remarks by the officiating sessions judge.—"The murder with which the prisoners are charged was committed in a part of this district known as the Jooni or Joom mehals, situated among the hills, and generally covered with jungle. The inhabitants of this jungle are of different castes and tribes, Mugs,

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Chukmas, Reaugs (by whom the murder was committed), Tipperahs and others, all more or less *nomade* in their habits. To the east of these people, but also scattered through the Jooni, dwell the Kookies, a tribe more backward in civilization than the others—men and women going alike generally in a state of nudity. They are looked on, by the other inhabitants of the Jooni, as an inferior race. The habits of all these tribes are nearly the same; a small patch of land is cleared of jungle for cultivation, and huts are built on piles for the different families intending to reside there. When the land is exhausted, or the inhabitants become tired of the place, they remove to another spot in the jungle, setting fire to the deserted village, to prevent their cattle returning to the homes they are accustomed to. The Reaug witnesses in this case, deny it is their practice to burn their villages, but this was probably merely asserted, from a vague fear of some charge of arson.

"The tribes worship fourteen *deotas*, or gods, some of which correspond to the Hindoo, while others are local divinities. It has long been notorious that human sacrifices to these gods are not of uncommon occurrence, and whether the court agree in my finding in this case or not, they will, I think, entertain no doubt that the sight of a number of Kookies offered to the gods, was one to which the Reaug witnesses and prisoners were not unaccustomed.

"The court will also observe, that the witnesses Musst. Shabutty and Tumputty and Karatum, (Nos. 45, 46 and 47,) are the bond slaves of Joodhomonee, the principal prisoner. In such a state of society as that which now exists in the Jooni, slavery perhaps will always be found to prevail, in spite of legal enactments to the contrary.

"The place of sacrifice described by the witnesses is merely a spot cleared of jungle and staked round with bamboos about six feet high. The *phoola bans*, mentioned by the witnesses, are bamboos scraped at the edges, the scraped strips left adhering to the stem, thus giving a rude notion of ornament.

"The proceedings in this case were held in Bengalee, which language was spoken with more or less fluency by all the prisoners, and by most of the witnesses. An interpreter attended, who translated the more difficult questions into the Tipperah dialect. The principal difficulty experienced, was from the want of knowledge in all parties of the mode of proceeding in our courts, and the constant interruption and mass of extraneous matters introduced in consequence.

"The Jooni village of Punnooa was formerly settled with Bhuggoe Roy (witness No. 50), and subsequently nominally let to Shante Ram (prisoner No. 4,) but in reality to Joodhomonee (prisoner No. 3); and in his calendar, the magistrate states that

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Bhuggoe Roy had again given the collector a *durkhast* for the settlement. There is however nothing to bear out this statement in the case, though from the deposition of Rajeeha (prisoner No. 5) at the thanna, on the 27th September, and the admission of Bhuggoe Roy, in court, that his friends may have given such a *durkhast*, though he had not, it may be surmised that such was really the case, and without the supposition of some such cause it is difficult to account for the apparent anxiety of Bhuggoe Roy to effect the seizure of Joodhomonee's person, and the determined enmity of the latter to the former.

"The order of events as they occurred in this case is as follows :—About the 14th September last, an informer waited on the magistrate, offering to cause the apprehension of Joodhomonee, an old offender. Instructions having been sent to the darogah, that officer, remaining himself at a safe distance in the rear, sent four burkundauzes with a number of hill-men to effect the arrest. The village (or house it is uncertain which) of Joodhomonee, having been surrounded, the inhabitants of the place rushed out on the police, fired and drove them off, the burkundauzes having behaved with their usual want of courage. All the prisoners are said to have been present in this attack, and bullets to have torn the jungle and ground in the neigbourhood ; but as the witnesses do not at all agree as to the number of shots fired, and the retreat was most precipitate, I do not, from this confused account, think that part of the count which charges the prisoners with having fired with ball is sufficiently proved, any more than that the parties actually present on the side of Joodhomonee were fully recognized, though of an attack, such as that charged, having been made, there can be no doubt. This circumstance forms the 3rd and 4th counts of the indictment, and is proved by the witnesses Nos. 4, 9, 12, 13, 30, 31, 32, 51, 52 and 53.

"All parties, after the repulse of the police, returned to their homes, and on or about Saturday the 27th September, Joodhomonee entered the village of Burra Punnooa, with 100 or 150 men armed, and calling for *russud*, or supplies for them. Bhuggoe Roy and others appear to have retreated into the jungles, and Joodhomonee with the other prisoners, and many men, proceeded to a *para* called Sukhun, about two miles distant, where some Kookies had taken up their residence a short time previously. These unfortunate persons, eleven in number, were seized and brought to Joodhomonee ; six were caused to bathe in the river, and were taken through the jungle to a place of sacrifice, where, in the presence of many persons, they were murdered by the prisoners, Oliham, Daria Hajra, Goomaiah, Paujeham, (Nos. 6, 7, 8 and 9,) and Nattuck Sha and Mirinjun (not taken,) each person slaughtering one of the Kookies, Joodhomonee and Chundromonee, (Nos. 3 and 10) *salaaming* at each successive sacrifice. All the prisoners are said to have been

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present (see depositions of witnesses Nos. 9 to 11.) The following night or morning early, three more Kookies, two men and a woman, were taken to another spot, and there sacrificed by the prisoners Rajeeha, Oliham and Paujeham (Nos. 5, 6 and 9). The other prisoners were present, except perhaps Daria Hajra and Goomaiah (Nos. 7 and 8), whom the witnesses Nos. 9 and 4 did not see.—(*Vide* depositions of witnesses Nos. 1, 2, 3 and 4.) What became of the remaining two Kookies is unknown. The witnesses declared that eleven persons were taken by Joodhomonee, and the sacrifice of nine only has been shown. After the murder of these people Rajeeah (prisoner No. 5) took the body of one of them to the thanna, calling it the corpse of his nephew, and charging Bhuggoe Roy with having caused his death. The sacrifice of these people is the first count of the calendar.

" One or possibly two days after the murder, Pheta Roy (witness No. 13) went, with a party, to ascertain whether Joodhomonee had left the place, when he was fired on by the prisoner Kallinjoy (No. 11), and severely wounded. All the prisoners are said to have been with Kallinjoy when this witness was wounded, and are guilty, therefore, of aiding and abetting —(see depositions of witnesses Nos. 13 and 15, and of Dr. Chevers, No. 24).

" Joodhomonee then determined to leave the country to escape the consequence of his acts. His reasons are shown by the depositions of witnesses Nos. 45, 46 and 47; and his apprehension at a great distance to the eastward, after this evasion, described by the jemadar Lala Tewaree (No. 54) and Issan Chunder (No. 55).

" The prisoners pleaded 'not guilty,' and called witnesses, who proved nothing in their favor. Some of the defendants denied that the parties who appeared were those they had wished to call, while many of the witnesses could not be found, a circumstance, considering the wandering habits of the tribes, not in any way surprising. None of the witnesses for Kallinjoy and Paujeham were forthcoming; but as they were expected to speak to an *alibi*, I give the prisoners the benefit of supposing that they would have done so. The prisoners seemed generally to have but a vague idea of what it was necessary to prove, and to imagine that the oaths of persons declaring them innocent would have weight against the evidence for the prosecution. The witnesses for the prisoner Chundromonee (No. 10) alone spoke positively to an *alibi*, but could not account for their distinct remembrance of the dates, 6th and 7th Assin, while they could not even give the year.

" Shante Ram (prisoner No. 4) died in jail during the trial.

" The law officer who sat with me on the trial, convicted the prisoners Rajeeha, Oliham and Paujeham (Nos. 5, 6 and 9) of

wilful murder, and the remaining prisoners of the other crimes charged in the calendar.

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"I cannot make much distinction in the degree of guilt to be attributed to each of the prisoners. It is clearly proved by the evidence, that Joodhomonee with other prisoners, and many other persons, seized eleven Kookies, of whom at least nine were sacrificed by the prisoners Rajeeha, Oliham, Darai Hajra, Goomaiah and Pajeeham (Nos. 5 to 9), Joodhomonee and the others looking on and approving the act done under the special direction of Joodhomonee assisted by his naib or sircar Chundromonee (No. 10). There are some slight discrepancies in the evidence, but not such as materially to affect it. I would convict the whole of the prisoners of the murder; and do not recommend sentence of death, only because I consider that transportation is more likely to be an effectual punishment in putting an end to human sacrifice in the Joohi. The inhabitants of the jungle are too much accustomed to danger and death, to look on the execution of a criminal as much more than an ordinary occurrence, even if, in their wandering life, they should hear of it; while the unknown terrors of transportation will at least strike the prisoners, and their being but one sentence passed, their fate is more likely to become generally known. I would, therefore, recommend that all the prisoners be sentenced to transportation for life with labor and in irons.

"Of seventy-two witnesses summoned in the calender, Nos. 3 and 4 came to the station, but subsequently absconded; sixteen could not be found; and of twelve witnesses summoned for the defence in the calendars Nos. 4 and 5, only four persons were produced in court. The hill-men have generally a dread of the plains, and with their wandering habits and the ease with which process can be evaded, it is not surprising that so large a number should have been absent from their usual or temporary homes.

"In the calendar No. 3, the magistrate has detailed, though I do not know on what authority, some particulars relating to the former career of Joodhomonee. In this court several witnesses spoke to having heard of former sacrifices of human beings offered by that prisoner, but would not speak from their own knowledge, possibly from fear of implicating themselves. It is, however, certain from the evidence of the Raja of Tipperah's servants (witnesses Nos. 54 and 55) that Joodhomonee holds the ghauts in despite of that native chief; for though many witnesses say that Joodhomonee farms these ghauts, the *mookhtar* and jemadar both deny that such is the case.

"It is not, I think, probable that the court will disagree so far with me as to acquit the prisoners, but should they do so, I would recommend that Joodhomonee be not released uncondi-

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tionally. His character is sufficiently notorious; and were he set at liberty, it is evident from this case that he has both the will and the power to raise a body of men numerous enough to wage a petty border warfare with the Raja of Tipperah, crossing into the Company's territory over the ill-defined frontier when pressed, necessarily causing serious disturbance."

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and R. H. Mytton.)—"The letter of the sessions judge contains a sufficient narrative of the circumstances of this case.

"Rarely have charges of such extensive, deliberate, and cruel butcheries come before the court. We have considered the case with the earnest attention which the atrocity and importance of it calls for. The prisoners, with one exception, and most of the witnesses, are Reaugs, persons of imperfect civilization, living in the jungly and hilly tracts of Chittagong, and speaking a different language from that of the plains. The communication with them has consequently not been quite so perfect as could have been desired. However, by means of interpreters, the sessions court has been able to form an apparently fair record of the evidence, and pleas in defence. One of the prisoners is a Bengalee, and employed by the principal offender, who seems to be a chief of a tribe, to keep his accounts. As he has been residing with the Reaugs, he doubtless knows their language as well as that in which the trial has been recorded, *viz.*, Bengalee, and his presence among the number accused gives confidence in the correctness of the record of the trial.

"The chief culprit Joodhomonee is a fugitive from justice, both in our territories and those of the Raja of Tipperah, and he appears to have been unpopular on account of his oppression. The Raja captured and delivered him, and the other prisoners, up to our police officers, and produced most of the important witnesses.

"It would be unreasonable to scan too minutely imperfections and slight incongruities in the evidence, but as Joodhomonee has undoubtedly made enemies to himself, it behoves us to observe strong improbabilities and contradictions in the depositions, and to be careful that the prisoners are not saddled with responsibility for atrocities on untrustworthy evidence.

"The case may conveniently be divided into four heads in the order of occurrence as follows:—

"*First*,—The attack upon the police at Rango Mattya, *count fifth in the calendar.*

"*Secondly*,—The sacrifice of six Kookies near Punnooa, *alias* Bhuggoe Roy's *para.*

"*Thirdly*,—The sacrifice of three Kookies near Lukkunpara. *N. B.—The two last form the second count in the calendar.*

"*Fourthly*,—The attack upon, and wounding of Pytuck Sha, *count three of the calendar.* 1852.

"With regard to the first event, we think that the opinion of the sessions judge, as recorded in the 8th para of his letter, is sound and just. The retreat of the police and their party appears to have been instantaneous on being attacked, and the depositions of witnesses as to recognizing all the prisoners at that time, under such circumstances, and in the jungles, is not to be trusted.

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"We therefore acquit the prisoner on this count No. 5, (not 3 and 4 as stated by the sessions judge.)

"We now come to the consideration of the charge of making sacrifice of human beings.

"The first, *viz*., of six Kookies, is said to have taken place near Bhuggoe Roy's old *para* on the evening of Saturday the 27th November. Five sacrificial altars in one place, and one in another, were found there, and the remains of three persons in the jungle adjacent. None of the prisoners have admitted at any stage of the inquiry that this sacrifice was committed by their party; some attribute it to Bhuggoe Roy. The witnesses who have given direct evidence on the point against the prisoners are No. 9, Mitro Shah of Punnooa, No. 10, Ramnarain of Chowdodhong and No. 11, Jye Mungul of Punnooa. They all account for their presence at the sacrifice by stating that they were made prisoners of by Joodhomonee and taken bound by him to the spot. The last admits that he did not actually see the sacrifice, having been kept at a little distance.

"Ramnarain, an inhabitant of another village, accounts for his being at Punnooa at the time he was seized, by saying that he went to take a walk there.

"We remark that Akhola, on the part of Bhuggoe Roy, on the 30th September, deposed to the darogah of Zorawargunge that Joodhomonee with 150 men attacked Bhuggoe's *para* on the 30th September and killed two of Bhuggoe Roy's men, Bundee Roy and Kirtee Chunder. Two of the above witnesses, Ramnarain and Jye Mungul, at that stage designated the Kookies' corpses as those of the said Bundee Roy and Kirtee Chunder, and said nothing about the sacrifice of six Kookies. They have not on trial been required to explain, as they ought to have been, their contradictory conduct and assertions, and have not offered to do so. Their evidence without explanation of this material point is by no means free from suspicion. The way in which the other, *viz*., Mitro Shah, accounts for his presence at the sacrifice is not satisfactory. The law officer who sat on the trial evidently discredited the evidence to this portion of the charge, as he did not find the prisoners guilty of it. We think that he was not wrong in his estimate

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of it, and we deem it unsafe to convict the prisoners of the murder of the six Kookies at or near Punncoa. With regard to the sacrifice of three Kookies at or near Lukkunpara, the prisoner No. 5, Rajeeha, has admitted to the darogah and to the magistrate being present, and that this sacrifice took place by Joodhomonee's orders, who also made him take one of the corpses to the thanna, and accuse Bhuggoe Roy of the murder. He did so, asserting it to be the body of his nephew, although he subsequently admitted that he had no nephew.

"Lukkunpara is nominally leased to Shante Ram, the son of Joodhomonee, but really to Joodhomonee. Joodhomonee after his attack on Bhuggoe's *para*, went and put up at this village, at the house of one Peejung. The witnesses to this occurrence Nos. 1, 2, 3 and 4, were inhabitants of this village and of Punnooa, who had been required to furnish Joodhomonee and his party with victuals. They were employed to carry torches of straw or grass during the sacrifice, which took place at night. They have given circumstantial and consistent depositions throughout, to the effect that Joodhomonee ordered the seizure of the Kookies, and that by his directions the prisoners Rajeeha, Paujeham and Oliham, bound three of them, performed *pooja*, and each of them cut off a Kookie's head as it were that of a kid, and that this was done to propitiate the gods in favor of Joodhomonee, and to get Bhuggoe Roy into trouble. The prisoner Rajeeha, pointed out the remaining two bodies floating without heads in water to the north of Lukkunpara. The witnesses state that the other prisoners, except No. 7, Darik, and No. 8, Goomaiah, were present aiding and abetting. The prisoners deny the charge on trial, some of them pleading *alibis*. None of them, however, have adduced any proof thereto except the Bengalee prisoner No. 10, Chundromonee. The evidence of his witnesses is not trustworthy, and it is inconsistent with the fact of his being found with Joodhomonee, far away in the Raja of Tipperah's territories, whither the party had decamped.

"Lastly, as regards the attack upon and wounding of Pytuck Sha. The evidence to this is only that of Pytuck Sha, No. 13, and Telychand, No. 15. They depose in the sessions court to Joodhomonee's heading the attacking party and ordering it to fire, and to the prisoner Kallinjoy firing and wounding Pytuck Sha, and to recognizing all the other prisoners among the party. Pytuck Sha, however, to the darogah distinctly declared that he could recognize no one but Kallinjoy and Joodhomonee, and these are the only persons he and the other witnesses named as recognized by them in the magistrate's court. Their evidence cannot be admitted against any others now.

"Under the above circumstances, we convict the prisoners Joodhomonee, (No. 3), Rajeeha (No. 5), Oliham (No. 6) and Pau-

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jeham, (No. 9) on the first count in the calendar of being principals in the wilful murder of three Kookies, names unknown; and the prisoners Chundromonee (No. 10) and Kallinjoy (No. 11) of being present, aiding and abetting therein.

"We also convict Joodhomonee (No. 3), Kallinjoy (No. 11), on the third count as principals. We acquit the prisoners Daria (No. 7), and Goomaiah (No. 8.)

"We do not deem the reasons adduced by the sessions judge for not recommending a capital sentence sufficient and sound. It is not probable that a sentence of transportation for life can carry with it to any class of human beings greater terror than one of death.

"Be this, however, as it may, the legislature prescribes death as the punishment for wilful murder without any extenuating circumstances. Assuredly in this case there are no such circumstances; no grounds for mitigation. The murder was deliberate and cruel in the extreme, and committed on miserable creatures who had given no provocation whatever.

"We sentence the prisoner Joodhomonee (No. 3), Rajeeha (No. 5), Oliham (No. 6), and Panjeham (No. 9) to suffer death, and the prisoners Chundromonee (No. 10) and Kallinjoy (No. 11) to imprisonment in transportation for life.

"The prisoners Daria (No. 7) and Goomaiah (No. 8) will be released.

"Shante Ram (No. 4) has died during the trial."*

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* With reference to his report on the above trial, the officiating sessions judge also submitted the following letter, No. 40, dated 1st May 1852:—

"In laying before the court, my letter No. 23 of 6th ultimo, reporting the trial of Joodhomonee and others for murder, I have to solicit that you will at the same time, submit the following remarks on the state of the police in the Joom mehals, or hilly portion of this district.

"On perusal of the case above alluded to, the court will, I think, agree with me in opinion, that, to a greater or less extent, the practices of human sacrifices and of personal slavery, prevail in the Joom mehals; which part of the zillah is mostly situated at such a distance from our police posts, that the darogahs and other officers have little power, or even opportunity, for interference to prevent such breaches of the law.

"The spot where the murder was committed by Joodhomonee, is about 40 miles distant from the thanna within the jurisdiction of which it is situated, and nearly the same from the nearest outpost; but there are parts of the Joom under the nominal jurisdiction of thanna Satkanneeah, which are from 200 to 300 miles distant from the nearest police station; and so ignorant are many of the tribes of the Joom of even the existence of a police, that when I inquired of some Morungs, who had recently dwelt at a village not more than 30 miles from the town of Chittagong itself, under what thanna their village was, they were unable to tell me, and professed utter ignorance of the words thanna, darogah, and other terms used in the police. They knew a burkundauze, whom they called buragunda, but not what his functions were.

"As stated in my former letter, the inhabitants of the Joom, are more or less nomade in their habits, frequently migrating from place to place, and when doing so, generally destroying the villages they desert. Land, which is commonly covered with dense jungle, may be said to be valueless in the Joom. Each family pays a certain sum for the right to cultivate; and in the few

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cases which have come before me in the civil court, it has been shown that the basis taken by the collector for assessment, is the number of families in the village, which is farmed to certain parties at so much for each house, the culturable area being left altogether out of consideration.

"The value of a Joom mehal depends on the number of cultivators which the farmer has influence to secure; and were he to treat his dependents harshly, they, feeling little or no attachment to their homes, would leave the place at once; and it is probably owing to this cause, that so few criminal charges are sent in from that part of the country. Another reason may be, the difficulty of finding the way to the thanna, and when there, of entering the charge; for very many, perhaps the majority of these people, can speak no language but a dialect of Tipperah or Muggee, neither of which is understood by the inhabitants of the plains.

"It is probable, that the inhabitants of that part of the Joom which borders on the open country are less nomade than in other and wilder parts; and as from the increase of population, the land becomes more valuable, they will become less and less so. In such situations, and at no great distance from the thannas, the farmers of the Joom mehals may no doubt be generally held responsible for the maintenance of order on their estates; but when they dwell at a greater distance, in the midst of dense jungle, there is not the slightest check on their proceedings. If threatened even with the loss of his mehal, a farmer may remove with his ryots to another spot, when in the jungle he might cultivate perhaps for years, without the fact being known to the collector, or other officer in the district. All our police regulations are based on the supposition that there is a right of occupancy of the soil in some individual; but in the Joom there is no such right, and thus all our Regulations based on this assumption are inapplicable.

"Another difficulty in the administration of justice in the Joom, is the apparent unwillingness of the inhabitants to come down into the plains, or to appear in court. This dislike, however, they merely share with other hill tribes. I have found it the same in Cuttack, Beerbhoom, and other districts, bordering on hills, covered with jungle. In the case of Joodhomonee the court will find, that of 72 witnesses named in the first calendar, 19 did not appear in court, and of these 19, 4 were material to the case, and after examination by the magistrate, escaped to their homes in the jungle, from the thanna. In the other calendars many of the witnesses to the defence were not to be found. In another case lately come before me, not one of the witnesses could at first be produced in court, and it was only owing to the circumstance that an influential farmer of Joom mehals happened to be concerned, that the charge could be proceeded with, and the criminals punished. Had the farmer not been interested, it would probably have been impossible to have traced the witnesses.

"Many of the inhabitants of the Joom declare that they are all of one tribe; the distinction between Reaugs, Chuckmas, &c., being merely one of caste like the Hindoos. This is evidently incorrect. The tribes are of different origin, or some, at least, have a large admixture of foreign blood. Many of those who have appeared before me, have Hindoo or almost European features, while others have the Chinese countenance, and there is every shade of difference between the two extremes. There may possibly be a great difference in the rites and domestic habits of the tribes, but I have found no person who could give me more than a general description, which, as such, may I believe be depended on.

"I trust I have shown in this and my former letter that the police Regulations are ineffectual, in a wild hilly country, at a distance from the residence of the darogah, who has to enforce the law, while to put down the practice of human sacrifice, which, I fear, to some extent, greater or less, undoubtedly exists, a more efficient check must be exercised over the various tribes, and their head men.

"In the Civil Court, the cases instituted by inhabitants of the Joom are very few in number, not more than two or three in the course of each year. There are more cases in the Criminal Court, but even here they are but few, though it is not unlikely much crime is concealed. The state of civilization in the mehals is scarcely such as will allow of regular laws, and I would suggest that, so far as criminal charges are concerned, that part of the

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district be exempted from the operation of the Regulations and Acts, and placed under the same control as the hilly country about Sylhet and on the south-west frontier. Such an arrangement would allow the authorities to hold the head men in a great measure personally responsible for the maintenance of order, whereas now the Regulations place obstacles in the way of doing so.

"No expense would necessarily be entailed on the Government by the adoption of this system. The commissioner or judge might be appointed agent to the Governor or Superintendent, and the magistrate or collector his assistant for the management of the mehals. If his other avocations admit of it, the collector would probably be the most efficient superintendent of the Joom. The deputy collectors are now obliged occasionally to make settlements there, and might be vested with magisterial powers, while the magistrate has no such assistants to depute. A small establishment of burkundauzes under some smart jemadars might be requisite, to crush at once such outrages as that lately committed by Joodhomonee, but if the present establishment is sufficient for the protection of the district, a corresponding reduction in the thannas might be made. If an increase should be required, it would, under any circumstances, be necessary in order to place the police on an efficient footing throughout the zillah.

"The extreme point of settled country might be taken as the boundary, and a line drawn between it and the jungles. All beyond this line being declared exempt from the operation of the general police laws.

"So little is known with certainty of the state of the Joom, that I can only apologize for not being more particular in my description. The magistrate's remarks, in his calendar on the trial of Joodhomonee, show his opinion that at times a civil war may almost prevail there, and our frontier might at any time be kept in a disturbed state, from being crossed by rebels to the Raja of Tipperah's authority.

"I beg to suggest that a copy of this letter and of my remarks on the trial of Joodhomonee be laid before the Government for any order they may think requisite."

With reference to the above the following letter, No. 706, dated 1st June, was addressed to the Superintendent of Police at Chittagong.

"I am directed by the court to forward to you, for your consideration, the accompanying copy of a letter No. 40, dated the 1st ultimo, from the officiating sessions judge of Chittagong, also of his report No. 23, of the 6th April last, on the trial of Joodhomonee and others, for murder, together with the remarks recorded by the presiding judge thereon on this date."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

MUSST. JHOOMPYE (No. 3), SHABAZ KHAN (No. 4) AND JAN BEBEE ALIAS MUNNA MAH (No. 5).

1852.

June 2.

Case of JHOOMPYE and others.

The prisoners were convicted of killing the deceased by means applied with her consent to cause abortion.

CRIME CHARGED.—Wilful murder of Musst. Noorun Bebee, wife of Jamal Khan, by causing abortion.

Committing Officer, Mr. G. D. Wilkins, officiating magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 8th May 1852.

Remarks by the sessions judge.—"The offence with which the prisoners are charged, is not only from its nature incapable of such clear proof as might be desirable, but the circumstance of the deceased having concealed to the last the fact of her pregnancy, has in a measure increased the difficulty; but the evidence of Sirdar Khan, witness No. 9, an old man who resided in the house of the deceased Noorun Bebee, and who states his age to be 100 years (and from his appearance he may be from 90 to 100 years old) to the effect that he saw the prisoner Jhoompye *alias* Jhoomroo Daee (who evidently follows the profession of midwife, though she denies the fact,) come to the deceased's house, and sit on her bed with Jan Bebee *alias* Munna Mah, the prisoner No. 5, both on the day of her death and the day previous thereto, and that he saw the said Munna Mah give and apply medicines internally and externally to the deceased, and that she did not afterwards rise from her bed; and the fact of the said Jhoomroo Daee having admitted, when first sent for by the police, that at the repeated request of Munna Mah, who told her the deceased's monthly courses had ceased and asked her to prescribe something to cause their return, she procured some asafœtida and aloes, and prepared two *buttees* or rolls of cloth twisted round a small stick, and gave them to the deceased, telling her to apply them, one at a time, and the evidence of the civil surgeon, who held a *post mortem* investigation of the body of the deceased, Noorun Bebee, who deposed positively to the fact of the deceased having been recently delivered of a fœtus of about four months' standing, and that her death was caused by injuries thereby occasioned in the womb, place it in my opinion beyond doubt that her death was caused by procuring abortion. And the witnesses who visited the deceased during her illness, not only deposed to having seen the prisoner Munna Mah attending on the deceased and carrying off her bed-clothes stained with

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blood, &c., but they, in common with the above-named Sirdar Khan, charged her and her grand-son, Shabaz Khan, the prisoner No. 4, who they allege got her with child, of having caused her death by administering the *buttees* and medicines to procure abortion. And witnesses Nos. 18 and 19, further depose that they saw the prisoner Jhoomroo Daee at the deceased's house during her illness. But the evidence of the witnesses as to Shabaz Khan's having been present and taken any direct part in administering the *buttees* and medicines, is contradictory and cannot be relied on.

" Before the magistrate Jhoomroo Daee, prisoner No. 3, again admitted having been called on by Munna Mah to prescribe for the deceased, whose monthly courses had stopped, and that she gave her a *pootlee*, or roll of cloth with salt on it, to apply to her private parts; and she also, though in somewhat a confused manner, admitted administering asafœtida and aloes, but disclaimed giving her the *buttees*, and denied *in toto* before this court.

" The other two prisoners pleaded 'not guilty' throughout.

" The *futwa* of the law officer is to the effect that the death of the deceased was caused by abortion; also that Jhoomroo Daee, the prisoner No. 3, gave the *buttees* to her to cause it; and that Munna Mah (No. 5,) attended on the deceased during their operation, or during her illness caused by the application of them; but that as it did not appear who actually caused the death of the deceased by abortion, and that the deceased was a consenting party, when she had the option of applying the *buttees* or not, it declared that the crime charged was not established. It further held that the fact of Shabaz Khan, the prisoner No. 4, having been the person who got the deceased with child, was not proved, and consequently that all three prisoners were entitled to their acquittal. But in the propriety of such a sentence against the prisoners Nos. 3 and 5, which is opposed to the finding, I cannot concur. And considering the crime of being accomplices in the murder of Noorun Bebee, by administering a *buttee* and procuring abortion, and thereby causing the death of Noorun Bebee, to be proved against Musst. Jhoompye *alias* Jhoomroo Daee, and Jan Bebee *alias* Munna Mah, the one in having furnished the *buttee* to the deceased, and the other in having assisted during the application and operation of it, to be proved by the evidence of the witnesses and the general circumstances of the case, and that whether the deceased applied the *buttee* herself or consented to others applying it, they are deserving of punishment, I would, under all the circumstances of the case, sentence them each to five (5) years' imprisonment with labor suitable to their sex. I however agree with the *futwa* as to the absence of proof of the fact of

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Shabaz Khan's having got the deceased with child, and consider it not unlikely, from the length of time that she is represented by the civil surgeon to have been in that state, that she became pregnant while absent at Indol; and not being satisfied that he otherwise took any part in causing the abortion, I directed his release."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"There seems no reason to doubt the fact of the deceased having been delivered of a child, and of having died from the injuries received in the womb. The direct and credible evidence of the witness Sirdar Khan is strongly corroborated by the confessions of the prisoner No. 3 before the police and the magistrate, and the circumstances of the case, and brings the offence clearly home to the prisoners. Though the operation was performed with the consent of the deceased, and the death of the woman was not intended, yet as the act was unlawful, and was attended with probable serious danger, the killing amounts, according to English law, to murder; according to Mahomedan law it is a punishable offence, but it does not come within the five denominations of homicide distinguished in that law. With reference to former precedents of the court, and under the terms of the *futwa* taken in this case, I convict the prisoners of causing the death of Noorun Bebee, who was in a state of pregnancy, in the attempt to procure abortion, and sentence them each to seven (7) years' imprisonment with labor suited to their sex."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

TINCOWREE DOME.

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Case of TINCOWREE DOME.

The act of the prisoner, who struck the deceased a blow on the head with a *dâo*, from the effects of which he ultimately died, held not to have been premeditated. The mitigated punishment of transportation for life was therefore awarded.

CRIME CHARGED.—Wilful murder of Gooroodass Paramanick.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. E. Bentall, additional sessions judge of East Burdwan, on the 10th of May 1852.

Remarks by the additional sessions judge.—"The deceased man Gooroodass lived at Jalaedunga, in the thanna of Pubtol, and the prisoner lived about four or five *beegahs* off, on the bank of the river Buree Gunga, in the village of Kanclicutolla. On the 30th of January last, Gooroodass was seen running towards the river with a wound on his head, and the prisoner was following him with a *dâo* in his hand. The witness No. 1 states that he saw the prisoner strike Gooroodass in the verandah of his house; but I do not trust his evidence, because he was not brought forward as a witness until the 22nd February, and his evidence is contrary to the deposition of Kaleedass, the brother of Gooroodass, which appears by the record to have been made on the 30th of January before the gomashta, and contrary to that of Gooroodass, which was made on the 31st before the jemadar. Gooroodass crossed the river, but the prisoner returned after he had gone into the water of the river. It appears by the record that the gomashta gave notice of the circumstance, on the day that it occurred, to a jemadar who resides three-eighths of a *coss* off, and who forwarded the report to the thanna, which is four or five *coss* off, and himself then proceeded to the spot. On the 31st of January last, according to the record, he took the deposition of Gooroodass, who accused the prisoner of having struck him with a *dâo*, and mentioned the names of witnesses Nos. 8 and 9, as having seen them running about the same time.

"On the 2nd of February the mohurir reported to the darogah that he could not find the prisoner. On the 3rd of February, he investigated the case, and the prisoner was said by the witnesses Nos. 8, 10 and 12, to have been seen with a *dâo* in his hand, running after Gooroodass, whose head was bleeding, and these men made similar statements before the magistrate and before me.

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"The wounded man was sent to the sudder station and taken to the charity hospital on the 2nd of February. He was found to have a contused wound on his head, which was neither serious nor dangerous in appearance; his appetite was good, and he did not get thin; the wound was healing fast, but about the 15th of February his jaw was locked and the muscles of the neck were contracted; his relations then carried him off to his home; he is said to have died on the 22nd of February. On the 24th, the civil surgeon examined his head and found that the inner lamina of the skull had been slightly splintered by the blow which he had received, and that the splinters had caused an abscess which pressed on the brain. This appears to have been the cause of tetanus, of which he died, according to the opinion of the sub-assistant surgeon, and the witnesses who saw him when he was alive just before his death. The prisoner was apprehended at Burdwan on the 27th of February. The dispute between him and Gooroodass is said to have arisen about a pack of cards, but as no witness was present when the dispute took place, and when the blow was struck, that point cannot be proved. There might have been some extenuating circumstances in the prisoner's favor, but if so, he should have stated them. I find the prisoner guilty of the murder, on the evidence of the medical officer, and of the witnesses Nos. 8, 10 and 12, supported as it is by the record of the case, and I propose that he be sentenced to imprisonment for life in transportation, and in doing so, I have taken into consideration that he ran after his victim after he had wounded him with a *dáo*, and that his wound was indirectly the cause of death by bringing on lock-jaw."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The deceased charged the prisoner with wounding him on the head with a *dáo*. He did not die for some days, but the medical attendants depose that death was caused by the wound. The skull was slightly splintered and the pieces were depressed. This produced irritation and inflammation which ended in an abscess, the pressure of which on the brain was the cause of death. No reason has been discovered for the assault except some words about a pack of cards, which passed between the deceased and the prisoner. This sudden attack without provocation proved, and the use of so dangerous a weapon, deprive the prisoner of every plea of justification and mitigation. It is not exactly shown what excited the prisoner's anger, but he seems to have acted without premeditation. I am therefore willing to accept the sessions judge's recommendation, of the prisoner, to mercy, and sentence him to imprisonment for life in transportation."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

GUNGA CHOWBEY (No. 1), KUNCHUN CHOWBEY (No. 2) AND DILAWR KHAN (No. 3).

1852.

June 4.

Case of GUNGA CHOWBEY and others.

The death of the deceased attributed to his having left the hospital before the injuries he had received in an assault by the prisoners were healed. The assault being in itself of a trivial nature, the sentences passed upon the prisoners by the sessions judge, were reduced.

CRIME CHARGED.—No. 1. assault attended with culpable homicide of Peroo Jolaha, and Nos. 2 and 3, aiding and abetting therein.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer, Mr. J. F. Lynch, deputy magistrate of Sewan, Sarun, with powers of a magistrate.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 16th February 1852.

Remarks by the sessions judge.—"The crime charged in this case arose out of a dispute caused by a relative of the prisoner having broken some ears of grain in a *khet* belonging to the deceased, upon which he proceeded to his father to remonstrate about it, when words arising, the two first prisoners and Dilawr (their servant) assaulted and beat the deceased, and broke a finger of his right hand, from the effects of which he eventually died after the assault. It appears that the deceased himself prosecuted the other parties for it, and at the same time was under medical treatment for the blow he had got in his hand (which was even then sloughing and in a bad state;) but not finding it get better he left the place and went home, and eventually died there, one month and nineteen days after the injury was received. All the prisoners deny their guilt; but there is ample proof of their having beaten the deceased, and of his having at that time received the injury which ended in, and caused, his death; but as it is *just* possible that had he remained under good advice, and been properly looked after, the result might have been different, I have in passing sentence (in concurrence with the *futwa*) dealt very leniently with them and have sentenced them to imprisonment only for the brief periods noted."

Sentence passed by the lower court.—No. 1, two (2) years' imprisonment without irons and a fine of rupees twenty (20) or labor; No. 2, one and a half (1½) years' imprisonment without irons and a fine of rupees twelve (12) or labor, and No. 3, one (1) year's imprisonment without irons and a fine of rupees six (6) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed. They urge that the

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deceased died from sickness, and plead an *alibi*. The *alibi* is not proved, and the evidence to the prisoners assaulting the deceased is clear and convincing.

"It appears that the deceased received a blow on his hand, which broke the bone of one finger, on the 19th of September; that he came to the station and made a complaint against the prisoners, and was under medical treatment from the 10th to the 26th of October, when he left the hospital with the wound in a sloughing state. The civil surgeon is of opinion that he died from the effects of ulceration of the wounded parts, and though the deceased was, from his infirm state and advanced age, from the first in danger, yet the prospect of recovery was much diminished by his leaving hospital. It is clear that if the wound had not been given, the deceased had not died; and I am of opinion, with reference to the circumstances of the case, the prisoners have been rightly convicted, but the assault was of a trivial nature, and I think the sessions judge, though professing to deal very leniently with the case, has passed too severe a sentence. I therefore sentence the prisoner Gunga, who struck the blow which caused the death of the deceased, to one (1) year's imprisonment with labor until redeemed by the payment of a fine of rupees twenty (20.) The punishment already undergone by the other prisoners is, I think, commensurate with their offence, and I direct their release."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

MUSST. KUJLEE.

1852.

June 4.

Case of MUSST. KUJLEE.

Murder of a girl eight years' old by her aunt-in-law, because she gave trouble and threatened to get the latter a beating. Sentence death.

CRIME CHARGED.—Wilful murder of Shajoo Chookree.

Committing Officer, Mr. H. C. Halkett, magistrate of Backergunge.

Tried before Mr. A. S. Annand, sessions judge of Backergunge, on the 29th April 1852.

Remarks by the sessions judge.—"The prisoner, who is about 30 years of age, confessed the crime with which she is charged in the Mofussil, and denied it before the magistrate and in this court. She urges in her defence, that the darogah having been unable to prove any one else guilty of the murder, has laid it upon her, to save himself, and having leagued with one Mudun Sein, the gomashta of her husband's talookdar, they have, by persuasion and threats, got her father, husband and the other witnesses, to join them in this conspiracy against her.

"Witness No. 1, Sheikh Muddy, deposes, that on a Wednesday in the month of Phagoon last, the date of which he does not recollect, about four in the afternoon, he was going to look after the cows of Suna Ulla, whose servant he is, and wanting to ease himself, he went into a ditch near the house of the said Suna Ulla; whilst there he heard a cry in the jungle towards the south-east of Suleem's house, and getting up, he went towards the place, when standing at the edge of the jungle, he saw Kujlee, the defendant, strike the child Shajoo, deceased, two blows with a *dâo* which she had in her hand, and then go away, carrying the *dâo* with her, to the house of Suleem. That Nazir Mahomed witness No. 2, came up at the time and saw the same as deponent. That witness and Nazir then went up to the spot and saw the body of the girl Shajoo lying on the ground, and that six or seven wounds had been inflicted upon her and she was dead. That the two blows witness and Nazir had seen, had been the last inflicted. That Nazir Mahomed then went away to the zemindar's cutcherry, and witness told him to give information of the murder, remaining himself at the house of Suna Ulla, his master. That on the next day, the darogah came and investigated the case, sending in the body of the child to the sudder station. That he, witness, saw the blows struck from a distance of from twenty to twenty-five *haths*. The child Shajoo was about seven or eight years of age, and was niece of the

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defendant's husband. Witness has heard that the defendant disliked the trouble of providing for the deceased Shajoo and her brother Gugun, and that she did so unwillingly; that her husband abused her in consequence, and on that account she killed the deceased. That the defendant having been angry on the morning of the occurrence, had gone to the house of her father Suleem, and that the deceased had come there, in consequence of which the murder took place near Suleem's house. That the house of Shodye, the husband of the defendant, is distant five or six hundred *haths* from that of Suleem. That as far as witness knows or has heard, defendant has no illicit connexion with any person, but she is of passionate temperament. The deceased had neither father nor mother alive, and lived with her uncle Shodye, the husband of the defendant. That deceased had gone to Suleem's house to bring back the defendant, who had left her home in a fit of passion. That he and Nazir did not seize the defendant after they had seen her commit the murder, because she had a *dâo* in her hand, and they were afraid. Has heard that Gugun, the brother of the deceased, went with her to Suleem's house to bring home the defendant; but that he had returned first. Gugun was about five years old. Recognizes the defendant as the person whom he saw wound the child Shajoo.

"Witness No. 2, Nazir Mahomed, corroborates the above statement in all essential particulars, and adds further, that after witnessing the murder, he went to the zemindar's cutcherry, and told them what he had seen, when he and Mudun Sein went to Shodye's house, and there saw the body of Shajoo, which had been brought in in the interim, and that defendant then said that she had killed the deceased. That he, witness, then returned home.

"Witness No. 3, Shodye (the husband of deceased) deposes, that on a Wednesday in Phagoon, the date of which he does not recollect, his niece Shajoo told him, that his wife, the defendant, would not give her any of the cold rice which had been prepared, and put away on the previous evening, and that he was angry with her in consequence. That he then went across the river about some rent that he had to pay, and returning home about 12 o'clock, he heard that his wife, the defendant, had gone to the house of her father Suleem. That he then went to press sugar-cane and returned about 5 o'clock, when he heard from his mother that Shajoo had been killed near Suleem's house; that he then went to Suleem's house and found the dead body of Shajoo, with six or seven wounds upon it, in the place where she had been killed, and quantities of blood on the ground. That on asking defendant, his wife, about the death of the child, she at first hesitated and shortly afterwards confessed that she had killed her. That he then took up the body and brought

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it to his house and placed the defendant under the charge of Suna Ulla and others in her father's house. That the deceased and her brother Gugun, having lost their parents, had lived with witness, who was their maternal uncle, for the last five years, and that defendant had told him that she had killed Shajoo, because she disliked her, and that witness believes that this was the reason, and his having been angry with her on the day of the murder for not giving the children their food. Cannot tell how the boy Gugun escaped. Says, that Suleem's house is six or seven hundred *haths* distant from his, and that his house is four hundred *haths* from where the murder was committed. The *dáo* produced, witness recognizes as the property of Kalye, the uncle of his wife, who lives in the same *baree* as Suleem.

"Witness No. 8, Suleem, (the father of the defendant) deposes, that on the day above stated, in Phagoon, early in the morning, his daughter Kujlee, the defendant, came with her son into his house and said, that she was angry with her husband Shodye and had come on that account; but she did not say why, nor did witness ask her. That about 12 o'clock, deceased Shajoo and her brother Gugun came, with sugar-cane in their hands, and in the afternoon they all three left the house, as witness supposed, to return home. After half an hour or an hour Kujlee returned alone, when witness thought that she had placed the children in her house, and had come back, not wishing to remain there herself, but did not ask her. That shortly after, he heard Shodye's mother, Armain, crying, and going out, saw a number of people, and proceeding to them, saw the dead body of Shajoo with the wounds above described. Heard afterwards that defendant had confessed that she had killed Shajoo. Has heard that the boy Gugun having seen his sister killed, ran home and told his grand-mother, Armain. Recognizes the *dáo* as belonging to his brother Kalye, which the defendant took out of a ditch near his house before the darogah and said, that it was with that she had killed Shajoo. The above evidence is fully borne out by the other witnesses.

"The uncovenanted assistant surgeon deposes, that he examined the body of the child Shajoo, that there was a deep seated wound on the back of the neck which extended down to the bone which would have caused speedy death in consequence of dividing the vessels on either side of the neck. That the body was in an advanced stage of decomposition; that he could not discriminate any other wounds, though it is quite possible there may have been others; that the child appeared to have been about eight years of age, and that the wound was inflicted by a sharp-cutting instrument, like the *dáo* shown to him in court. This *dáo* is identified by the witness, and weighs seven *chittacks*.

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"The assessors agreed in a verdict of wilful murder against Kujlee, in which I most fully concur. A more atrocious case could hardly happen. The poor child Shajoo was cruelly and deliberately murdered by the defendant, who standing with her husband in the place of her deceased parents, ought to have been her protector, because she hated her for the trouble she gave, and wished to get rid of her. I see no extenuating circumstances whatever, and recommend that Musst. Kujlee, the defendant, should be sentenced to death."

Remarks by the Nizamut Adawlut.—(Present: Messrs. W. B. Jackson and R. H. Mytton.)—Mr. W. B. Jackson.—"Two witnesses saw the prisoner Musst. Kujlee, inflict two wounds with a *dâo* on the deceased child Shajoo; they came up and found the child dead; the prisoner went away; there were six or seven wounds on the child. On being apprehended, the prisoner confessed the crime in the Mofussil. It seems the deceased child and a brother lived with their uncle Shodye; their parents are both dead. Deceased complained to Shodye, that the prisoner, who is Shodye's wife, would not give her the remainder of the rice prepared for their meal the night before; Shodye found fault with the prisoner for this and then went out of the house. The same day the prisoner was seen to kill the child, who was about eight years old; and it appears that she did so on account of the child's complaining of her to her husband and getting her into trouble. I can find no circumstances of a nature to extenuate the crime, and would sentence the prisoner Kujlee to suffer death."

Mr. R. H. Mytton.—"I concur with Mr. Jackson. The prisoner's confession to the darogah is full and circumstantial, and it has been proved to have been voluntary. In this statement, the reason given by her for committing the crime is, that her husband loved his nephew and his niece (the deceased) better than his own child, and that they were always getting her abused and beat by him; that on the day in question being beaten, she went to her father's, where they came, and deceased asked her to go home. She refused, and on this the little girl said 'if you will not come, I will tell my uncle, and get you 'another beating' This irritated her, and she got the *dâo*, and taking the child with her into a jungle, threw her down and inflicted about seven blows. The alleged cause of provocation cannot be admitted as a sufficient ground for mitigation.

"The prisoner is sentenced to suffer death."

PRESENT:

W. B. JACKSON, ESQ., *Judge*.

GOVERNMENT

versus

GURREEB DOSS ALIAS KUNHAI RAM.

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Case of GURREEB DOSS *alias* KUNHAI RAM.

The prisoner was sentenced for administering intoxicating drugs, with intent to rob the party drugged.

CRIME CHARGED.—Administering poisonous or intoxicating drugs, with intent to steal, to Musst. Husrunneea.

Committing Officer, Captain H. M. Nation, assistant general superintendent for the suppression of thuggee, and joint magistrate of Patna.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 11th May 1852.

Remarks by the sessions judge.—"The reason of this reference is my differing in opinion with the law officer, who convicts the prisoner of administering only some intoxicating substance with intent to steal, whereas I think the effect of the drug administered to the witness Husrunneea, described by the witnesses, evidently shows, that it was a stupifying and poisonous substance.

"The following are the leading points in the evidence. The witness Husrunneea states, that she was on her way from her home in the district of Azimghur to Jugurnath; that she had joined the prisoner two days before this occurrence; that on approaching the village of Teekaree, she felt tired, and at the well the prisoner gave her a white powder and some seeds, which he said would take away all fatigue and enable her to proceed briskly; that after taking these things and proceeding about two bamboos' length, she felt her head swinging. The prisoner then began to feel for her money, about two rupees, eight annas, in her clothes, but was prevented from robbing her by the chowkeedar coming up and taking him into custody. She became insensible afterwards, and so remained the whole day and till next morning.

"Hunsraj and Bhugeeruth, chowkeedars, declare, that they were attracted by an altercation between the prisoner and the last witness, Husrunneea accusing him of poisoning her; the prisoner was walking away when they arrived at the spot, but being arrested, gave up a *kutora*, which he said belonged to Husrunneea, and on being asked if he had poisoned her, said, he had only given her some medicine to relieve weariness. The witness Dhoura appears now to have come up, and by the time Hunsraj took the prisoner away to the *chowkee*, making the woman over to the care of the other two, all agree that she was nearly insensible and unable to speak.

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"The prisoner repeated in the magistrate's presence very nearly what he told the chowkeedars, and in this court his defence was, that the woman importuned him to give her some of his *kasnee* and ginger, which many of the lower class are in the habit of taking with 'bang'; that he refused for a long time, but she persisted and he gave her some, but nothing else. He called no witnesses.

"I consider the prisoner guilty of administering some poisonous substance to Husrunneea with intent to rob her when insensible, and would recommend that a sentence of fourteen (14) years' imprisonment, with labor in irons, be passed upon him by the Nizamut Adawlut."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The prisoner Gurreeb Doss, was travelling with Musst. Husrunneea, and on reaching Tekaree, Musst. Husrunneea said she was very much fatigued. The prisoner gave her some seeds to chew, to relieve her fatigue, as he said; but she found that the effect of them was such as made her giddy, and the prisoner attempted to take some money from her clothes. She immediately called to some people near, and said she was poisoned. The chowkeedar, who was near, immediately arrested the prisoner. Musst. Husrunneea became worse and lost her senses and did not recover them till next morning. It does not appear that the drug, whatever it was, left any permanent bad effects. The sessions judge considers it proved to have been poisonous, whereas the law officer thinks it only proved to be of an intoxicating nature, though possibly in excess it might be fatal, like other intoxicating drugs. I convict the prisoner, Gurreeb Doss, of administering intoxicating drugs to Musst. Husrunneea with intent to rob her while under their influence, and sentence him to imprisonment with labor and irons for seven 7) years."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

MUSST. BHEEKANIA

versus

KOOER DOME (No. 2), MOHIT DOME (No. 3) AND JHUPSEE DOME (No 4).

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Case of KOOER DOME and others.

One of the prisoners mortally wounded the deceased in a sudden brawl, while two held him down. The first was convicted of aggravated culpable homicide, and the others of accompliceship in it.

CRIME CHARGED.—1st count, wilful murder of Heera Dome; 2nd count, culpable homicide of Heera Dome; 3rd count, Nos. 3 and 4, accomplices in the above; and 4th count, Nos. 3 and 4, aiding and abetting in the above.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 29th April 1852.

Remarks by the sessions judge.—" This case originally came on for trial on the 27th ultimo; but being remanded for revision of the charge under the provision of Circular Order of 14th November 1851, was again returned corrected by the magistrate on the 28th, when it commenced *de novo*. It is now referred to the Nizamut Adawlut in consequence of my dissent with the *futwa*, which convicts one of the prisoners (Kooer) of wilful murder, and the two others of aiding and abetting in it; whereas I conceive that no greater crime than culpable homicide (though clearly of an aggravated description) is established against them.

" The facts are briefly as follows:—The three prisoners having been invited to attend a funeral feast given by a woman named Dhoria (witness No. 3,) in honor of her husband's mother, when all was ready refused to eat with the deceased Heera, (who also with his wife, prosecutrix, and mother, (witness No. 1), were present) when words arising between them, the prisoners Mohit and Jhupsee laid hold of deceased and pulled or threw him down, whilst Kooer stabbed him in the back and chest with a *kauta* (knife used for cutting bamboos), of which wounds he died within a very short interval.

" This at least is the story told of the occurrence by the women, who were present at the time; but I think it hardly gives a true account of what took place, or shows sufficient cause for the deceased's having been stabbed as he was; and these statements can hardly be fully relied on, as the persons who make them are each and all more or less connected with the deceased. They all state, that when the food was ready, Dhoria told the men to sit down and eat, and on the three prisoners refusing to do so in company with Heera, she told them that she looked upon them all as equal and alike, and

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then desired Heera to sit down and eat first, and on his sitting down for the purpose, the three prisoners (who were sitting close by) rushed forward and seized and stabbed him. However, this hardly accounts for the extreme violence used; and I am inclined to think that other words (if not blows) must have passed between them as two other witnesses (Lungut and Peer Alee, who are quite unconnected with the parties) both say, that they were sleeping in a *khurean* at some five *russees'* distance from the spot, when they were awakened by the noise going on, and going there, saw the deceased standing (both Mohit and Jhupsee having hold of him) when Kooer stabbed him as stated by the women, and he staggered a few paces and fell down, when the prisoners effected their escape.

"All the prisoners deny their guilt, and in defence declare, that they had left the place before the man was stabbed; but they call no witnesses, and, in fact, say nothing to refute the strong evidence against them; and it appears to me quite certain that the deceased met his death at their hands in the mode and manner above set forth. The moulvee declares the prisoner Kooer guilty of murder, and Mohit and Jhupsee of having aided and abetted him in it; but I do not concur in this opinion, as the act appears to me to have been unpremeditated, and to have arisen out of a broil and dispute caused by their (prisoners') refusing to eat with him, and the very fact of the witnesses Lungut and Peer Alee having been awakened by the noise and disturbance which took place, in my opinion shows that there must have been more quarrelling than the women admit. However, as, under the most favourable view, this is clearly a case of aggravated culpable homicide, it becomes my duty to refer it for the orders of your court; and in so doing, I recommend that the prisoner Kooer be sentenced for it to imprisonment for fourteen (14), and Mohit and Jhupsee, to seven (7) years' each, all of them with labor and in irons."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoners in this case offer no evidence in their defence. It appears from the record, more especially from the depositions of Lungut Komar and Peer Alee Fuqeer, that Mohit Dome and Jhupsee Dome, seized the deceased, Heera Dome, and threw him down, when Kooer Dome inflicted two severe wounds, both mortal, as sworn by the assistant surgeon, on the deceased. He died on the spot. No previous enmity existed between the prisoners and the deceased, but some words passed on the occasion as to which of them should be first helped at the feast, the *shraud*, which was given by Dhoria on the death of her mother-in-law. The prisoners Mohit and Jhupsee, when they seized the deceased, may not have contemplated the result of their attack on him, and it is highly probable, that they

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were not in a state to reflect at all. These feasts amongst the caste of Domes, are usually attended with excess; and the witness Peer Alee has sworn that they appeared to have been drinking. They cannot, however, on this account, escape from the consequences of their participation in the homicide, which I think one of an aggravated nature.

"The prisoner Kooer, was the actual perpetrator of it, and his offence is of a much graver nature. I concur therefore with the sessions judge in passing the enhanced sentence of fourteen (14) years' imprisonment, with irons and labor upon him, which the sessions judge has proposed.

"For the reasons above stated, I sentence the prisoners Mohit and Jhupsee to seven (7) years' imprisonment with irons and labor."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

BHAJAIE GARROW.

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Case of BHAJAIE GARROW.

The act of the prisoner was presumed by the Nizamut Adawlut to evince an intention to kill the deceased, but in consideration of the state of the Garrow tribes, to which both parties belonged, and to the provocation and loss the prisoner had sustained, he was sentenced only to transportation for life.

CRIME CHARGED.—Wilful murder of Buddok Garrow.

Committing Officer, Mr. A. Abercrombie, assistant, exercising the powers of joint magistrate at Jumalpore.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 10th May 1852.

Remarks by the sessions judge.—"The prisoner lives in the Garrow hills, adjoining pergunnah Sherepore, and is unacquainted with Bengalee; his plea and defence therefore were taken, and the evidence of all the witnesses explained to him by witness No. 6, who understands the Garrow language, and is chowkeedar of a village at the foot of the hills, and by Dengraw Garrow and Manukha Garrow, who understand both languages, and had come in to the station in connexion with a case of burglary tried a few days before.

"Information of the crime, or rather that the deceased had fallen from a tree and been killed, was given by witness No. 6, to the darogah, for fear the prisoner would have run away again as he did after commission of the crime, on which the darogah sent two burkundauzes with witness No. 6, into the hills, and the prisoner was apprehended and confessed in the Mofussil and before the assistant having killed the deceased. At the thanna he stated he wounded the deceased on the left side, which caused his death, with the spear produced in court (which has a blade, a span in length and 2½ fingers in breadth at the broadest part,

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and is very sharp,) because on his refusing, as he had before agreed to do, the day before he was killed, to give the deceased a bull to eat, he struck the prisoner a blow on the neck, and killed the bull with a spear; that at night deceased went to his *machan*, about 4 or 4½ *haths* high, and was asleep, when about 4 *dhunds* of the night he went with his spear, got up the ladder, and wounded deceased with it, who calling out twice, Buddun and Shomukha, who were near, coming, he fled and did not return till Phagoon, when those persons saying they found the deceased wounded, and that he had said he had wounded him, he admitted having done so. Before the committing officer he said, he had killed the deceased with a spear, because he had struck him a blow and killed his bull with a spear; that he wounded the deceased on the left side when on his *machan* at night and ran away, and does not know whether he died or not; that deceased wanted to eat the animal, and on his refusing to give it him, had killed it; and that deceased asked why he was killing him.

"These confessions are corroborated by the witnesses Nos. 10, 11 and 12, who state they were also on the night in question on their *machans*, watching their fields, and hearing the deceased scream, thought he had been attacked by a bear or tiger, and going to him immediately, found him wounded on the left side, and were told by him that he had been wounded by the prisoner, but was unable to say more, and died immediately after. They state, they mentioned the case to the chowkeedar, who ran away, after which they burnt the body. They also were aware of a quarrel having occurred between the prisoner and deceased the day before, about the bull which the latter had killed.

"Before the court the prisoner pleaded 'guilty', but before recording that plea, I directed the interpreters to be careful to explain to the prisoner, that the question was, whether he had wilfully killed the deceased or not. In his defence he said, he had wounded the deceased, because he had struck him, but named no witness.

"The *futwa* of the law officer convicts the prisoner of murder, and declares him liable to *kissas*. I concur in the verdict of murder, but, under the circumstances of the case, beg to recommend that the prisoner be transported for life, for the prisoner had received great provocation from the deceased, and it is possible, as there was no repetition of the blow, even when the deceased called out, that the prisoner only intended to wound and not kill the deceased."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoner is a Garrow, as was the deceased. It appears they had a dispute about a bull which belonged to the

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prisoner, and was killed by the deceased some time in the course of the day, on the night of which the prisoner, about 9 P. M., went to a *machan* on which deceased was watching his crops, and there killed him with a spear, the head of which is described by the sessions judge to be a span in length, two and a half fingers in breadth at the broadest part and very sharp. The prisoner's defence is, that the deceased struck him and killed his bull. There is no evidence to the fact of the murder, but deceased on the spot named the prisoner, who has throughout confessed.

"Whether the prisoner only intended to wound and not to kill, as suggested by the sessions judge, must be gathered from his acts. Some time after he had received the provocation, he alleges, the prisoner went by night, and while the deceased was asleep on his *machan*, speared him with the weapon already described through the body: the deceased survived but a very short time.

"It is only in consideration of the state of the Garrow tribes, and the provocation and loss the prisoner sustained, that a mitigated sentence can be justified. Under the above circumstances, I confirm the sentence proposed by the sessions judge."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT

versus

TEEKA *alias* CHUTOOREE.

1852. June 4. Case of TEEKA *alias* CHUTOOREE.

Privity only to culpable homicide, and not privity to murder as charged, established against the prisoner.

CRIME CHARGED.—Privity to murder of a man, whose name and residence are unknown.

Committing Officer, Mr. L. S. Jackson, magistrate of Patna.

Tried before Mr. G. Gough, commissioner of Patna, with powers of a sessions judge, on the 12th May 1852.

Remarks by the commissioner.—"The following are the details of this case:—The dead body of a man, supposed to have been murdered, was found in the vicinity of a village called Paharpore; during the course of the inquiry instituted by the police, information was obtained, tending to excite suspicion that the murder had been committed by some of the inhabitants of a neighbouring village named Moheooddeenpore, of which the prisoner was the *gorait*, and was supposed to have some knowledge of the murder. This led to the prisoner's apprehension, when he confessed his knowledge of the murder, which he said, had been committed by Dusari Mehtae and Pooran, and that the former gave him rupees two and some clothes as a bribe, to

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induce him to say nothing of the matter. The magistrate failed in obtaining evidence against these parties, and accordingly did not commit them for trial, but considering the guilty knowledge of the prisoner established, committed him on the charge of privity to the murder.

"This charge I consider clearly substantiated against the prisoner, from his own voluntary confessions, and as he admits having taken money to induce him to withhold his knowledge, which as *gorait* it was his duty to communicate, I think he deserves severe punishment. The law officer convicts the prisoner, and I would recommend imprisonment with labor and irons for ten (10) years."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The prisoner Teeka is charged with privity to murder; but there is no evidence to the murder. The prisoner's confession is to the effect, that he saw two men beat the deceased and kill him, but they said he had come into the house to steal, and they therefore beat him. If he was found in the house in a situation which rendered it probable that he went there to steal, and was killed in trying to escape, this would not be murder; but there is no satisfactory or sufficient evidence to the circumstances under which the deceased was killed. The prisoner as *gorait*, however, in neglecting to report to the thanna, was guilty of a serious neglect of duty, and having taken a cloth, &c., as a bribe to conceal it, may also be considered privy to the killing of the deceased. I convict him as privy to the crime of culpable homicide and sentence him to imprisonment with labor and irons for five (5) years."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT
versus
HUMMEDOOLLAH.

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Case of HUMMEDOOLLAH.

The mitigated sentence proposed by the sessions judge, to be passed upon the prisoner convicted of perjury, disapproved of by the Nizamut Adawlut under the circumstances of the case.

CRIME CHARGED.—Perjury.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 13th May 1852.

Remarks by the sessions judge.—" In a trial of a charge of affray before the magistrate, where it was almost impossible to get the evidence of witnesses unconnected with the parties, the prisoner deliberately swore, that he is not, and had never been, the *serburakar* of Joogul Kishore Dewan, (one of the parties,) and then, on the production of a petition, which he had filed in the collector's office, where he styles himself the *serburakar* of Joogul Kishore, he immediately stated on oath, that he was his *serburakar*, alleging that from lapse of time, he did not remember the circumstance; these facts are proved, and there can be no doubt but that the prisoner committed the perjury with the hope of inducing a readier belief of the principal substance of his deposition.

" The prisoner pleaded 'not guilty,' and stated, that he had never acted as *serburakar*, though he was so called in the petition, but he called no witnesses in support of his defence.

" Under these circumstances, I am of opinion that a sentence of six (6) months' imprisonment will be sufficient."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—" The prisoner Hummedoollah, is convicted of perjury by the sessions judge and by the assessors. It appears that in an affray case he stated on oath, that he was not, and never had been, *serburakar* on the part of Joogul Kishore, but on copy of a petition on his part being produced, he admitted also on oath that he had been his *serburakar*, adding that he had forgotten after so many years. It appears that it was only three years afterwards that he gave this deposition, and there is every reason to believe that he gave this false evidence purposely, with a view to benefit Joogul Kishore in the case. I convict the prisoner Hummedoollah of perjury, and sentence him to imprisonment for three (3) years. The sessions judge recommends a sentence of six (6) months, but he gives no reason for mitigation, and I see none."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

PAUCHOORAM MUNDUL

versus

PAUCHOO NYE (No. 37), MONIRAM MUNDUL (No. 38), BHUGWAN MUNDUL (No. 39), KUSIMUDDEEN SHEIKH (No. 40), TARICOOLLA CHOWKEEDAR (No. 41), BAKUR MAHOMED SHEIKH (No. 42), DENONATH MUNDUL (No. 43) AND KULIMUDDEEN (No. 45).

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Case of PAUCHOO NYE and others.

Dacoity with wounding; sentence of fourteen years' imprisonment upon five prisoners confirmed, and two released, the main proof against them being recognition, of doubtful truth. Sentence upon one prisoner convicted of having plundered property in his possession, reduced to seven years' imprisonment.

CRIME CHARGED.—1st count, Nos. 37 to 43, dacoity, attended with the wounding of the prosecutor, at the house of the prosecutor, during the night of 25th January 1852, corresponding with the 13th Magh 1258, and plundering therefrom property, valued at rupees 143; and 2nd count, Nos. 37, 39 to 43 and 45, having some parts of the plundered property in their possession, knowing it to have been obtained by robbery by open violence.

CRIME ESTABLISHED.—Nos. 37 to 43, dacoity attended with wounding: and Nos. 37, 39 to 43 and 45, possessing plundered property, knowing it to have been acquired by dacoity.

Committing Officer, Mr. H. Rose, joint magistrate of Khoolnea, Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 27th March 1852.

Remarks by the sessions judge.—"It is proved, from the evidence for the prosecution, that at midnight of 13th Magh, about a dozen dacoits, armed with clubs, &c., with their faces partially concealed by cloth, and having five torches, attacked prosecutor's house, broke open his boxes, plundered his own, and mortgaged jewels, &c., to the value of rupees 143.

"Prosecutor was repeatedly struck by a club and wounded; witness No. 1, on being awakened by the noise, was threatened and made to keep quiet.

"Prisoners Nos. 37 and 38 were recognized by the prosecutor and by witnesses, and named to Chand chowkeedar, witness No. 6, and to neighbours, who came up just after the fact and saw the prosecutor lying wounded, his doors and boxes broken, and who gave notice at the thanna. No. 37 was arrested and his house was searched, when his mother gave up part of the plundered property, which has been duly identified by the owners and witnesses. No. 38 was also arrested, but no property was found in his house: he was duly recognized as above. Both these prisoners are proved guilty of dacoity attended with

wounding, and No. 37 is also guilty of possessing property, knowing it to have been thereby obtained. Prisoners Nos. 39 to 45 were also apprehended, on information lodged by Tofan, witness No. 60, the chowkeedar of their village; some of the plundered jewels were found in each of their houses. No. 39 confessed: his confession and the circumstantial evidence of witnesses Nos. 16, 17, 22, 23, 59, 60 and 61, and the discovery of plundered property duly identified by prosecutor, by mortgagers and by witnesses, proves that Nos. 39 to 43, were participators in this dacoity attended with wounding, and knowingly possessed property so acquired. Prisoner No. 41 is a chowkeedar and No. 43 was a police burkundauz. All the prisoners plead 'not 'guilty' at the sessions'; but their witnesses say nothing to exculpate them.

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"Under these circumstances, I convict No. 38 of dacoity with wounding, and Nos. 37, 39, 40, 41, 42 and 43 of dacoity with wounding, and having in their possession property, knowing it to have been obtained by dacoity: and I sentence each of these prisoners to fourteen (14) years' imprisonment with labor in irons in banishment.

"Prisoner No. 45 (a relative of prisoner No. 42) is proved guilty of knowingly possessing part of the plundered property, which was fully recognized by three different mortgagers, as well as by the prosecutor and other witnesses, and which he claims as his own, but his witnesses disprove his assertion. I therefore convict him of possessing plundered property, knowing it to have been acquired by dacoity, and sentence him to fourteen (14) years' imprisonment with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prosecutor in this case, in his original deposition to the darogah, stated, that he had recognized the prisoners Pauchoo and Moniram and four others at the time of the dacoity.

"Persons attacked by robbers in the dead of the night are so much alarmed, that under any circumstances their identification of their assailants is not to be depended upon. In this instance, the prosecutor named no one to the chowkeedar before he went to the thanna, as may be gathered from his, the chowkeedar's, deposition there. The chowkeedar has deposed contrary to this on the sessions, but his statement cannot be relied upon after what he recorded at the thanna. The prosecutor in the sessions court deposes to recognizing only four out of the six persons he named as recognized to the darogah, and the witnesses to recognition have also varied in their statements. They cannot be trusted.

"Against Moniram there is no other proof whatever, and against Pauchoo Nye only the discovery in his house of a pair of armlets. The statement of the prosecutor led to the discovery

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of no other article of property whatever. He may have been mistaken in supposing this to be his.

"The subsequent clue led to the discovery of a considerable quantity of property, and circumstantial evidence was obtained against the other prisoners, one of whom confessed. Neither the circumstantial evidence nor the confession implicate Pauchoo and Moniram. There is therefore strong reason to believe, that they were not concerned in the dacoity. The sentence upon them cannot be confirmed. They will be released.

"In the possession of the other prisoners, property of considerable value was found, concealed in various places, and the circumstantial evidence, if credible, tends to a strong presumption that the prisoners are guilty of the charges on which they have been convicted. The degree of credibility attachable to this evidence, can best be estimated from the manner in which it was given by the judge holding the trial, and he has been satisfied with it. I see no reason, therefore, to interfere with the conviction.

"The sentence upon Kulimuddeen appears disproportionate to that upon the others, considering that he has not, like them, been found guilty of the dacoity, and the only difference in his punishment is, that he has not been sentenced to banishment.

"The term of his imprisonment is reduced to seven (7) years."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

NINNOO SHEIKH.

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Case of NINNOO SHEIKH.

The conviction by the sessions judge of the prisoner for highway-robbery, affirmed on appeal.

CRIME CHARGED.—1st count, highway-robbery of property, valued at about annas 14, belonging to Mooty Bhoonawalla; 2nd count, receiving and possessing a part of the stolen property, knowing it to have been stolen.

CRIME ESTABLISHED.—Highway-robbery.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 1st April 1852.

Remarks by the additional sessions judge.—"Mooty Bhoonawalla lives at Achannuk. On the 6th of February last, he was going home, about 11 P. M., from Pulta Ghaut, and was attacked and robbed of a cloth and a stick by three men; he watched them and saw them go into a house, and then informed the police, who apprehended the prisoner the same night, at that house, in which he lives. Mooty recognizes the prisoner as the man who robbed him; and the next day his stick, which is valued at two pice, was found in some ashes behind the house. There is a truthfulness about the case, and I see no reason to doubt the evidence of Mooty Bhoonawalla. The prisoner called witnesses only to character, which does not appear to be good, as he had once been in jail and he has been apprehended on suspicion of dacoity."

Sentence passed by the lower court—Three (3) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The prisoner was apprehended almost immediately on information of the prosecutor, who watched him into his house. The stick recognized by prosecutor and his witnesses, was found within the four walls of prisoner's house. His defence is not made out; on the contrary, he is proved to be a bad character."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

SODAM SINGH

versus

KUTTOO SHAH.

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Case of KUTTOO SHAH.

Burglary with intent to steal. Sentence (the prisoner being an old and repeated offender) of ten years' imprisonment confirmed.

CRIME CHARGED.—1st count, burglary with intent to commit a theft, in the shop of the prosecutor; 2nd count, privity to the above charge.

CRIME ESTABLISHED.—Committing burglary, with intent to steal.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 26th April 1852.

Remarks by the sessions judge.—" The prisoner was seized at night, in the prosecutor's house, having effected his entry by burglariously breaking into it with the intent to steal.

" He confessed to having accompanied others, with the intent of aiding them in the burglary, and before this court, pleaded guilty to privity.

" The assessors find him guilty of committing burglary with intent to steal, and in this verdict I agree.

" The prisoner has almost lived in jail for the last ten years. In 1837, he was first charged with theft, but acquitted. In 1841, he was imprisoned for three (3) years' in default of security. He was then sentenced to three (3) mouths' imprisonment for theft. In 1843, he was sentenced to three (3) years for burglary, and in 1849, for vagrancy."

Sentence passed by the lower court.—Ten (10) years' imprisonment with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—" The prisoner Kuttoo appeals for mitigation of his sentence, on the ground that the theft was not completed, and that his accomplice was sentenced to a lesser punishment.

" The prisoner appears to be a confirmed marauder, and has been very properly sentenced to a severe punishment.

" The appeal is rejected."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

KASHEE CHUNDER SURMAH

versus

SHEIKH SADHOO ALIAS SHEIKH SIDUL.

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June 9.

Case of SHEIKH SADHOO *alias* SHEIKH SIDUL.

Prisoner convicted of attempt to commit burglary, and in consequence of his being a repeated offender, sentenced to ten years' imprisonment. Sentence confirmed.

CRIME CHARGED.—1st count, attempt at burglary in the house of the prosecutor; 2nd count, privity to the above charge.

CRIME ESTABLISHED.—Attempt to commit a burglary.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 23rd April 1852.

Remarks by the sessions judge—"On the 17th February last, the prosecutor went outside his house at night and saw four men standing, while a fifth was breaking into his house. The four men ran away and he seized the fifth, the prisoner, and calling out, was joined by Gour Singh, who was in his house, and together they secured him, and in the morning conveyed him to the thanna.

"The burglary was not completed, but only attempted. Before the darogah and magistrate the prisoner stated, that he is a servant of one Behaleah, and accompanied him to the prosecutor's house, to carry away the property stolen, and that on his master's running away, the prosecutor seized him, the prisoner.

"Before this court he pleaded 'not guilty,' and called witnesses to prove that he lives by agriculture, but they stated nothing in his favor.

"The prisoner is a notoriously bad character, having been three times convicted and sentenced to various periods of imprisonment, and has no ostensible means of livelihood. In 1828, for stealing a boat, and in 1842 and 1848 for cow stealing, and he was only released about ten months ago.

"The assessors find the prisoner guilty of attempting to commit a burglary with intent to steal, and in this verdict I agree."

Sentence passed by the lower court.—Ten (10) years' imprisonment with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner in his petition of appeal asserts that the prosecutor has a spite against him. Of this there is no proof. He admitted the charge to the darogah and to the magistrate. He has been three times previously convicted of heinous crimes; and his conviction and the sentence passed upon him in this, are perfectly right and proper. The appeal is rejected."

PRESENT:

A. J. M. MILLS, AND R. H. MYTTON, ESQRS., *Officiating Judges.*

KHUNJUN

versus

USGUR.

1852. June 9.

Case of USGUR.

Prisoner convicted of wilful murder of his wife by repeated blows of a heavy bamboo, in consequence of his abusive language being returned by her. Sentence death

CRIME CHARGED.—Wilful murder of Musst. Budny.

Committing Officer, Mr. H. C. Halkett, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 14th May 1852.

Remarks by the officiating sessions judge.—"The plaintiff, Khunjun, the father of the deceased, deposed, that one Saturday morning, the date of which he does not recollect, he went to a place called Natoor, which is about one hour's journey from his house, to cut earth. About ten o'clock his howladar, Futtick, came to him, and told him that his son-in-law, Usgur, had killed his wife, Budny, the daughter of deponent; going home immediately, he saw his daughter Budny lying before the southern house of her husband Usgur; she had a wound on and around the left ear, and four wounds upon her head, and was speechless. That Meghye, No. 6, Futtick Mahomed, No. 5, Muneeruddeen, No. 3, another Muneeruddeen, No. 11, Zyenoollah, No. 14 and Ramjaun Chowkeedar, No. 13, were there. That deponent then, taking Zyenoollah chowkeedar with him, went to the thanna and gave information of the case, when the mohurir came to the spot and drew up the *sooruthal.* Two days after deponent's daughter died from the wounds she had received, and the body was sent into the sudder station. She died about four in the morning. Heard that the defendant had struck her with a bamboo, and saw a blood-stained bamboo lying near her; that the defendant had had a quarrel with deceased about preparing his food, he told her to get it ready, and she replied, that he must go to the tank and get fish, and then she would prepare it for him; this made him angry, and they abused each other, when defendant, getting more angry, seized deceased, dragged her out of the house, and then beat her. The defendant Usgur, Muneeruddeen and deponent, live in the same *baree.* Has heard that at the time of the occurrence, deponent's wife and the wife of Muneeruddeen, and Muneeruddeen, who was sick, were in the house. Deceased was about 25 years of age, in good health and had no illicit connexion with any person. The defendant is of an uncertain disposition, and had sometimes abused and beaten

deceased. She had no children. Deponent recognizes the blood-stained bamboo, as the one with which the defendant was said to have struck deceased. The bamboo was lying near the door of the house of the deceased, when he seized it and struck her; from the time deceased was wounded until she died, she could eat nothing. Deponent cannot tell how long or deep the wounds were. Recognizes the defendant at the bar. Deposes further, that there is a man named Berye, the uncle of Futtick, deponent's howladar, and that he is the ryot of both, and that deceased went to Berye's house with her husband shortly before she was killed, to partake of a marriage feast, and that she danced there. That he never heard of any intimacy between the said Berye and his daughter. Defendant was angry with his wife for not returning that night from the nautch; she came back next day about twelve o'clock. She excused herself by saying, that the other women remained and she remained in consequence. The defendant was a connexion of Berye's, as his brother was the husband of defendant's sister.

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"The prisoner Usgur denied the crime, with which he is charged, in the Mofussil, before the magistrate and in this court. He refers for his defence to a long petition containing an incoherent tale, to the effect that he had been impotent for two or three years, that his wife had connexion with Muneeruddeen, Berye, Loye and Nowcowree, by whom she had been pregnant, and who had procured abortion for her and had now killed her; that she had given him, defendant, poison, and that the marks of its effects are still visible upon his skin; not one word of which is supported by the evidence of the witnesses he has adduced for that purpose, who to a man deny all knowledge of the matter they were brought forward to prove, save one, who stated, in a doubtful and hesitating manner, that he had heard that the wife of deceased had been pregnant, and that abortion had been brought about; but he could not say from whom or when he had heard it.

"Witness No. 1, Musst. Thanda (wife of the plaintiff and mother of the deceased) deposes, that on a Saturday morning, date of which she does not recollect, her son-in-law Usgur, the defendant, asked his wife, to give him some rice to eat, when she brought him some cold rice that had been cooked on the previous day, which he eat. That after an hour or so he told her to boil some rice and prepare it with *koomor* (a vegetable like *kuddoo*), she said she made it every day without fish and to-day he ought to go to the tank and get her some, when she would prepare the food. On this the defendant abused the deceased, and deceased defendant, when the latter seized her by the hair, dragged her out of the house, and taking up a bamboo, struck her first over the left ear, when witness seized him: he

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'then struck witness on the hand, when she let him go, and he then renewed his attack upon the deceased and struck her four times on the head, inflicting severe wounds, from the effects of which she fell senseless and quantities of blood issued from them. On hearing the cries of witness, Magai and Futteh Mahomed and Ramjan and others came up, and, seeing the state of deceased, seized the defendant, when the defendant said that the deceased had abused him and he had made her bleed in consequence. That the prosecutor came home and went to the thanna with the chowkeedar before stated. That the deceased died two days after from the effects of the wounds, not having been able to speak from the time they were inflicted. That deceased had no illicit connexion with any one. Recognizes the bamboo shown to her as the one with which her daugher was killed, and points out the defendant Usgur in court; corroborates all that prosecutor said about deceased having been at the marriage and *nautch* at Berye's house, except that she adds, that the defendant remained all night with his wife at Berye's house and returned early in the morning, deceased coming home about half an hour after him, having waited to see the *julleea*, or first interview between the married people, at which, with the exception of the bridegroom, no male is present.

"Witness No. 2, Musst. Rookee, the wife of Muneeruddeen, saw the whole as above described, and corroborates the evidence of witness No. 1, in every essential particular. Witness No. 3, Muneeruddeen, deposes, that on the day of the occurrence he was lying sick in the house, when he heard his wife and the mother of deceased call out suddenly, 'stop, stop,' and going out, saw the deceased lying on the ground and Usgur, with the bamboo in his hand, struck her one blow on the head with it after he came out; that on examining the deceased he saw a wound on her left ear, and four on her head. This witness also, in all essential particulars, corroborates what has been before stated.

"Witness No. 4, Futtick howladar, witness No. 5, Futteh Mahomed, and witness No. 6, Baroo, confirm in like manner the evidence given above; a detail of their statements would only be a repetition of what has been written.

"The uncovenanted assistant surgeon deposes, that he found the skull fractured in several places, that on the crown it was driven in on the surface of the brain, and the brain itself was in a high state of inflammation and had a large quantity of black blood extravasated upon its surface. The injury was of so severe a character, that it must have terminated in death, and that, in his opinion, the wounds had been inflicted with a blunt heavy instrument, similar to the bamboo shown to him in court. That there was no appearance of sickness, and the wounds above described were the sole cause of death. The bamboo produced

and identified by the witnesses is blood-stained, nearly as thick as a man's arm, about two and a half feet long, and weighs one seer and nine chittacks.

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Case of Usgur.

"The assessors returned a verdict of wilful murder against Usgur, in which I concur, considering the proof to be as clear as it possibly could be; the deed having been witnessed by three people, who it does not appear had any sort of animosity or dislike to the defendant, or any reason whatever for deposing falsely against him; and the evidence of those not immediately present when the murder was committed, corroborating that of the others and agreeing in essential particulars to fix the guilt of the deed beyond a doubt upon the defendant. I see no extenuating circumstances, and recommend that Usgur be sentenced to undergo the extreme penalty of the law."

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and R. H. Mytton.)—Mr. A. J. M. Mills.—"The guilt of the prisoner is quite clear. Three witnesses depose to his doing the deed, and the other witnesses were almost immediately on the spot, and speak to the deceased lying wounded and senseless on the ground; and to the prisoner standing by, with the blood-stained bamboo, the instrument of death, in his hand. His defence is unsupported by proof. It appears that the prisoner, who is a person of uncertain temper, abused his wife because she excused herself from boiling his rice, unless he got her some fish, and on her returning the abuse, he dragged her by the hair of the head out of the house, and taking up a bamboo, described to be as thick as a man's arm, he inflicted four blows on her head, which fractured her skull in several places, and caused her death. The nature of the instrument and the severity of the injuries, denote a deliberate and malicious intention to take life; and lead to the belief that something more than abuse, in all probability jealousy, was the impelling motive to the crime. But any abuse which the deceased may have given utterance to, cannot be admitted as affording any palliation of the prisoner's murderous assault upon his wife; and, in concurrence with the opinion of the sessions judge, I recommend the prisoner be sentenced capitally."

Mr. R. H. Mytton.—"I see no reason to believe that the prisoner committed the murder, of which he has very properly been found guilty, with premeditation. Suspicion may have been rankling in his mind, but the immediate cause of the fatal assault was the abuse which the deceased gave him. He however appears to have been the first to make use of terms of abuse, and persisted in striking the deceased after his mother-in-law had attempted to induce him to desist. The club which he used was heavy, and judging from the *post mortem* examination, the blows with it must have been repeated, and brutally severe. I therefore cannot withhold my assent to the sentence proposed by the sessions judge and Mr. Mills."

PRESENT:
SIR R. BARLOW, BART., *Judge.*

MUSST. TOONEE
versus
BASHOO JULKUR.

1852. June 9. Case of BASHOO JULKUR.

The prisoner having struck his wife so that she fell overboard from a boat and was drowned, was convicted of culpable homicide.

CRIME CHARGED.—Wilful murder.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 20th May 1852.

Remarks by the sessions judge.—"The prisoner went to fetch his wife, a girl of about eighteen years of age, home to his house, and entered with her into a small boat, but arrived alone, and on being questioned by his brother said, he had put her ashore for a necessary purpose, and that she had not returned. Dissatisfied, the brother sent for the chowkeedar, to whom he confessed that he had asked his wife for some *pawn*, which she did not give him, and that he struck her a blow in the face when she fell overboard and was drowned.

"The stream was searched and the body of the deceased was found, but no marks of violence were apparent.

"The prisoner repeated his confession to the darogah and the magistrate, and pleaded 'not guilty' to the charge before me; but in his defence admitted his confessions, which are proved to be perfectly voluntary.

"The mother of the deceased and the neighbours deny the existence of any previous enmity, and I have no doubt, but that the death of the deceased was caused as stated by the prisoner,

"I tried the case with the aid of the law officer, who convicts the prisoner of wilful murder, and declares him liable to *kissas*, but from this verdict I dissent.

"The prisoner had no intention whatever of killing his wife, but as his assault upon her precipitated her into the water, thereby causing her death by drowning, I consider him guilty of culpable homicide, and would sentence him to six (6) months' imprisonment."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"I concur with the sessions judge. No marks of violence were observed on the corpse when found; there does not appear to have been enmity between the deceased and prisoner, who in his distress of mind, attempted to cut his own throat, but was prevented doing so by some persons standing by."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

HARREERAM BHOOMIJ (No. 14) AND FUTTO BHOOMIJ (No. 15).

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Case of HARREERAM BHOOMIJ and another.

The prisoners although convicted of murder, were, on account of extenuating circumstances in the case, sentenced only to imprisonment for seven years, with labor and irons.

CRIME CHARGED.—Wilful murder of their respective wives and one Madha Bhoomij.

Committing Officer. Captain G. N. Oakes, 1st class Assistant to the Governor General's Agent, Maunbhoom, Hazareebagh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebagh, on the 12th May 1852.

Remarks by the deputy commissioner.—"The prisoners plead 'guilty.'

"No. 1 witness, Bankoo Sirdar, states, that on the last day of Phagoon, about nine o'clock in the forenoon, Chyton Kahal of Perargaria, came to witness's house, and told him that three persons had been murdered; witness then went with Chyton to Perargaria, where he left Chyton and Bisna Suntal with the bodies, and went to give information to the police. The darogah said 'go thou, seize and hold the culprits,' and witness was accordingly returning from the police station, when Bundiram, chowkeedar of Matgara, said to him 'the murderers of thy village 'have gone with three heads to the police station.' Witness then went after and found the prisoners at Asonbini, whence he brought them to the police station, where they gave up the three heads and made confessions of the murders. Witness is acquainted with the prisoners and the deceased Madha Bhoomij. Madha cohabited with the prisoner Harreeram's mother; her name he believes is Champa. She had been living with Madha for ten or twelve years. Harreeram and his wife used to come to Madha's house.

"No. 2, witness Deboo Bhoomij.—One evening the prisoners Harreeram and Futto came to witness's village with three heads, were taken prisoners and sent with Badi Sirdar to the police station. They had the axe and hatchet that are now in court, and said they had committed murder.

"No. 3, witness Sonatun Bhoomij.—To the same effect.

"No. 5, witness Bardunath Sirdar.—Took charge from Deboo Sirdar of the prisoners, who carried in their hands three heads. Witness put them in charge of the Digwar of Matgara.

"No. 6, witness Chytun Suntal.—Proves the record of the inquest. The three bodies were decapitated.

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"No. 9 Witness Harreedas, ⎫ —Prove the confessions of
„ 10 „ Madhub Bhukut, ⎬ the prisoners before the
„ 11 „ Mohun Torooee, ⎭ police officer.
„ 12 „ Sheikh Bokhoree, ⎫ —Prove the confessions before the 1st class assistant.
„ 13 „ Juggoo Ram, ⎭

"These confessions are to the effect that the wives of the prisoners Musst Srimati and Sadhoo, and the deceased Madha Bhoomij, were missing, and the prisoners, suspecting that their wives had gone off with the said Madha, made search for them in the neighbourbood, and after some days, found the three sitting together under a tree eating some jungle fruits. Whereupon the prisoners without parley both struck Madha with their weapons, an axe and a hatchet, so that Madha's head was severed from his body. They then attacked their wives severally. The prisoner Harreeram cut off his wife, Musst. Srimati's, head, at two blows, and the prisoner Futto, having pursued his wife, Musst. Sadhoo, who ran off some paces, cut off her head at five blows, Harreeram then took up the heads of Madha and Srimati, and Futto the head of Sadhoo, wherewith they immediately gave themselves up to the villagers of Soro, and were brought thence to the police station. The prisoners had not found any proof of the supposed infidelity of their wives beyond the fact of their being in company with Madha.

"No. 14, witness Bankoo Bhoomij.—One day in Phagoon, the prisoners Harreeram and Futto told witness, that their wives had gone off with Madha. Nine days after that the murder occurred. During that interval, Madha and the woman Srimati and Sadhoo were not seen in the village. Prior to the murder, there had not been any quarrel among the parties. Witness lives close by and would have been aware of any quarrels. Madha had taken Harreeram's mother, and he used to call Futto's wife his *sasooree* (wife's mother.) The prisoners' wives and Madha used constantly to go to the jungle together, and there was nothing known of any improper intimacy between them.

"No. 15, witness Futto Bhoomij.—To the same effect.

"The prisoner Harreeram in his defence says, that he killed his wife because she had gone off with Madha. Prisoner sought her for eight days, and on the ninth day, finding her with Madha in the jungle, he killed them both.

"The prisoner Futto makes a similar defence.

"The jury, whose names and occupations are entered below,* find the prisoners guilty of wilful murder.

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* Gowree Churn Puldundy, *mookhtar*.
Essur Chunder Sircar, *mookhtar*.
Nundcoomar Sircar, *mookhtar*.

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Case of HARREERAM BHOOMIJ and another.

"That the facts of this case are truly stated by the prisoners I have no doubt; for so far as it goes, the external evidence agrees with their statements. Their wives had gone off. Madha (or Madhub) had also gone off, and the prisoners concluded that the three had gone together, and the prisoners made search for them during eight days. These facts are in evidence. The actual circumstances of the murder are disclosed by the prisoners themselves. There is on their part no apparent desire to make out a favorable case for themselves by going beyond the truth. They do not say that any criminal act on the part of their wives had been discovered. Simply they found them in company with Madha, and then, without asking for a word of explanation, they killed the three. The particular details are probably true. Harreeram is a strong young man, and had a good weapon: he killed his wife at two blows. Futto is an old man, and had an indifferent weapon: he killed his wife at five blows. These are unimportant circumstances, but they confirm the truth of the narrative.

"The act of the prisoners was evidently premeditated, and was carried through with strong determination. Their subsequent conduct shows, that they considered themselves justified in what they did. Under the circumstances of the case, I do not consider them liable to an extreme penalty, yet a due regard for the protection of life forbids me to hold them guiltless. I object to the admission of any justificatory plea of adultery, short of the detection of the parties in the act. Outraged feelings may then overpower judgment, but no presumption of adultery can justify murder. That the prisoners are uncivilized, need not be insisted on. They are mere barbarians, and, like all their class, they have an utter disregard for the lives of others. A more striking example of Soorye manners than this case presents, could hardly be found. To draw from this argument for mercy, is not unreasonable; but there is danger in carrying such arguments too far. The acquittal of one gives licence to another, and raises a *custom* of impunity that tends to increase the frequency of the offence. Throughout this country among the male population, adultery is the rule, fidelity, the rare exception—yet these men pursue to the death a suspicion of the infidelity of their wives. The wife has on the one side no redress; and unless the courts refuse any justification of her murder by the husband, short of her being taken by him in the fact of adultery, she has, on the other side, no protection. I even doubt whether any such plea should be wholly accepted Some punishment might justly be inflicted in any such case.

"Agreeing with the jury, I find the prisoners Harreeram Bhoomij and Futto Bhoomij, guilty of wilful murder; but believing and allowing great weight to the extenuatory circumstances pleaded by the prisoners, I would recommend only that they be

1852. June 9. Case of HARREKERAM BHOOMIJ and another.

imprisoned for three (3) years, and pay a fine of fifty (50) rupees each, or, in default, to labor until the fine be paid, or the term of sentence expire."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"This case is fully detailed by the deputy commissioner. The prisoners have all along confessed. The deputy commissioner has remarked, that there are circumstances to which great weight should be allowed in extenuation of their crime. The absence of the wives of the two prisoners for some eight days in company with the deceased Madha Bhoomij, their being all three found in the jungle together by the prisoners, who had made a long search for them, and the fact, that they were armed at the time they discovered the fugitives, afford certainly some ground for mitigation of punishment, but I am of opinion, that the deputy commissioner has not recommended a sentence commensurate with the guilt of the prisoners. I sentence them to seven (7) years' imprisonment with irons and labor."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

MUSST. MASOOM (No. 7) AND MOOLEE SHEIKH (No. 8).

1852. June 9. Case of MUSST. MASOOM and another. Exposure of an infant with intent to destroy it.

CRIME CHARGED.—No. 7, exposing her new-born infant, with intent to destroy it, and No. 8, accomplice in the said crime.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 14th May 1852.

Remarks by the sessions judge.—"The prisoners denied the charge. The Government was prosecutor; and the particulars of the case, as elicited by the evidence, are as follows:

"One morning, very early on the 26th March 1852, or 14th Cheyt 1258 B. S., a female infant was discovered by her cries in a crop of *kat teel* by two or three of the inhabitants of the nearest village. The child was found naked, with the navel string uncut, and there were stains of blood upon the ground, as if the parturition had taken place there. A *dhye* was sent for from the village, who took care of the child, did what was needful for it, and fed it on cow's milk, while a search was made for the mother. A chowkeedar, Khoodeeram, went to the village of Amdhole, and heard from a man ploughing in the fields, that he had seen a man and woman proceeding together in a westerly direction. He then went to the village of Baudypore, and seeing

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Case of Musst. Masoom and another.

the prisoners, apprehended them. On the woman's feet and clothes there were stains of blood. He questioned her, and she admitted that she had abandoned the child. Upon being brought to the spot where the child was, she took it in her arms and nursed it. They confessed at the thanna, that they had abandoned and exposed the child, and the witnesses to their confessions, attested them in this court. Before the magistrate they stated, that the child was still-born. In the sessions court Musst. Masoom states, that she gave birth to the child in the *kat teel* crop, and left it to go and wash her clothes in the river, which was near, when the chowkeedar apprehended her. Moolee Sheikh states, that when Masoom was giving birth to the child, he went for a *dhye*, and on his return she told him the child was still-born. The criminal connexion was admitted by both prisoners. Woodar Mohul Dasin, the midwife of the village of Hurrispore, near which the infant was found, and who cut and arranged the navel string, thought from the appearances on the ground and the little quantity of blood, that the infant was born in another spot; but she admitted that the stains had dried up; and I see no ground whatever for believing, that the birth had not taken place there. The crop concealed the infant, and had not her cries been heard, in all human probability, death must have ensued. The nearest house was five or six *russees* off.

"Considering all the circumstances, —the criminal connexion with the brother's wife, the shame attendant on it, the departure in consequence from the brother's house, the spot where the infant was born and abandoned, and the way in which it was abandoned immediately after its birth, and with the navel string uncut, the accidental discovery under Providence, the admissions of the prisoners, and the general evidence,—I am led to the conviction, that the infant was exposed by the prisoners with intent to destroy it; and as the law officer in his *futwa* convicts the prisoners of the exposure of the infant immediately after its birth, in a place where it is probable it might have been destroyed, but not with the intention to destroy it, I submit the case to the court of Nizamut Adawlut, recommending, with reference to the case of Musst. Uslee, Nizamut Adawlut Reports, volume V., page 177; Musst. Motee, ditto, volume III., page 83; and Musst. Omolah, ditto, volume I., No. 5, for May, the only difference being, that in this case, the life of the child was providentially preserved, that they both be imprisoned for five (5) years with labor."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The guilt of the prisoners is established on the clearest evidence, and it cannot but be concluded, from the place, time and manner of abandoning the child, that the intent was to destroy it. I convict the prisoners of the charges and sentence them each to seven (7) years' imprisonment with labor and irons."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

NULOO SIRDAR

versus

GUDDADHUR DASS (No. 1), MOOCHEERAM DASS (No. 2), RAMDHUN DASS (No. 3) AND MUNNOOLLA SIRDAR (No. 4).

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Case of GUDDADHUR DASS and others.

A prisoner convicted on evidence of recognition at the time of dacoity, and the discovery of an article of plundered property at his father's house, acquitted. Sentence upon the others confirmed, there being other corroborative proof against them.

CRIME CHARGED.—1st count, Nos. 1 to 4, dacoity in the house of the prosecutor, on the night of the 1st September 1851, or 17th Bhadoon 1258 B. S., and plundering property therefrom, valued at Company's rupees 1850-9-3; 2nd count, Nos. 2 to 4, having in their possession a portion of the stolen property, knowing the same to have been obtained by robbery by open violence.

CRIME ESTABLISHED.—Nos. 2 to 4, dacoity, and No. 1, accomplice in dacoity.

Committing Officer, Mr. J. R. Muspratt, officiating joint magistrate of Baraset, 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 28th February 1852.

Remarks by the sessions judge.—"The prosecutor deposed, that on the night of the 17th Bhadoon last, about two and half *puhurs*, his house was attacked by about twenty dacoits, who broke open his boxes and petarahs, and plundered property to the amount of about rupees 1800, consisting of cash, gold and silver ornaments, and clothes. Some of the dacoits were armed with axes and with *lattees*, and some had *mussals*, amongst whom he recognized prisoner No. 2, Moocheeram Dass, with sundry jewels in his hands, and prisoner No. 4, with a lighted *mussal*. Witness No. 1, Kholill Gazee and witness No. 2, Addur Gazee, who were in attendance on the prosecutor's sick brother, recognized prisoner No. 3, Ramdhun Dass, who was a servant attached to the shop. Information was given the next day to the darogah, and on searching the houses of prisoner No. 2, Moocheeram Dass, and prisoner No. 3, Ramdhun Dass, and prisoner No. 4, Munnoolla, some property was discovered, which the prosecutor recognized as his own. The night was dark, and no one resided in his house but himself, his brother, the two witnesses above-mentioned, and the females of his family. The prisoners denied the charges on which they were arraigned in this court. Prisoner No. 1, Guddadhur Dass, both in the Mofussil and before the magistrate, admitted his being an accomplice in the dacoity. Witness No. 1, Kholill Gazee, and witness No. 2, Addur Gazee, corroborated the statement of the prosecutor as to the fact of the dacoity and the plunder

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of the property, and recognized prisoner No. 2, Moocheeram Dass, prisoner No. 3, Ramdhun Dass, and prisoner No. 4, Munnoolla, prisoner No. 3 having an axe in his hand, prisoner No. 2 a *mussal* and a *lattee*, and prisoner No. 4 an axe and a *mussal*. Witness proved the discovery of some part of the plundered property in the possession of prisoner No. 2, Moocheeram Dass, prisoner No. 3, Ramdhun Dass and prisoner No. 4, Munnoolla, which was recognized and proved to be the property of the prosecutor. Witness No. 19, Pursulla, and witness No. 20, Kamoo Gazee, deposed also to the fact of the dacoity and the marks of violence which they observed in the prosecutor's house. Prisoner No. 1, Guddadhur Dass, declared he was beaten by the darogah, and cited witnesses to prove his good character. Prisoner No. 2, Moocheeram Dass, cited witnesses to prove that he was at the prosecutor's *gola* at the time of the dacoity, and also to certify his good character. Prisoner No. 3, Ramdhun Dass, cited witnesses to prove that he was sick, and that the property discovered in his possession was his own. Prisoner No. 4, Munnoolla, cited witnesses to prove that the property found in his possession was his own. The witnesses for prisoner No. 1 gave him a good character. One witness for prisoner No. 2, merely deposed to his coming to the prosecutor's shop on the evening of the dacoity; the others certifying his good character. One witness for prisoner No. 3 gave him a good character; but nothing favorable was elicited regarding the property found in the prisoner's possession. Witnesses for prisoner No. 4, gave him a good character; but nothing was elicited in the prisoner's favor regarding the property found in his possession.

"The jury considered the first count proved against prisoner No. 1, Guddadhur, prisoner No. 2, Moocheeram Dass, prisoner No. 3, Ramdhun Dass and prisoner No. 4, Munnoolla, and the second count against prisoners Nos. 3 and 4. I concurred in thinking the first count proved against prisoner No. 2, Moocheeram Dass, No. 3, Ramdhun Dass and No. 4, Munnoolla, and prisoner No. 1, Guddadhur Dass, guilty of being an accomplice in dacoity, and sentenced them to punishment accordingly."

Sentence passed by the lower court.—Nos. 1 and 4, each, ten (10) years' imprisonment; No. 2, seven (7) years' imprisonment and No. 3, fourteen (14) years' imprisonment, all with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"Since the case was before this court on the appeal of Guddadhur Dass the other prisoners have appealed. It has therefore to be considered as regards them all.

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Case of GUDDADHUR DASS and others.

"The prosecutor on the arrival of the darogah deposed that he had recognized at the time of the dacoity the prisoners Mocheeram (No. 2) and Munnoolla (No. 4,) and that he suspected Ramdhun (No. 3,) the father of Mocheeram. He has deposed to the same effect at the sessions; and two witnesses, who state that they were asleep at the prosecutor's, depose that they recognized all three prisoners at the time of the dacoity.

"In the course of the inquiry, the darogah heard that the prisoner Guddadhur had been concerned in the dacoity, and he arrested him. He made a confession, from which it appeared that he was invited to commit the dacoity by the prisoner Ramdhun, who is the prosecutor's servant at his salt *gola*, at some distance from his dwelling.

"In the house of Ramdhun and his son Mocheeram a silver chain was discovered in a *telia*, and it was recognized by the prosecutor; and when the house of Munnoolla was searched, his wife stated that her husband was out on the night of the dacoity, and on his return in the morning he gave her a set of musquito curtains and a *thal*, the former of which was recognized by the prosecutor.

"I have on several occasions stated that the evidence to recognition at the time of dacoity is very untrustworthy, as from my knowledge of the habits of dacoits, I believe it to be very rare that any one known to the inmates of the house enter it. If there be any such of the party they remain on picket duty outside; moreover, the terror which such an attack excites, renders it highly improbale that any inmate of the house attacked would be sufficiently in command of his senses to identify any one of the robbers even if he knew them before. For this reason I attach little or no weight to the evidence to recognition, and can only accept it on strong corroboration.

"The confessions to the darogah and to the magistrate of Guddadhur are very circumstantial and enter into minute details, which it is highly improbable that a person not concerned in the dacoity would think of inventing. They are proved to be voluntary, and of his guilt there can be no doubt. His statements are corroborative of the guilt of Ramdhun and Munoolla. In them the former is said to have given notice of the prosecutor having received a large sum of money, and to have collected the dacoits. He is also said to have carried away the bulk of the booty to the house of one Esur Mookerjee, under a promise of distributing it after all danger had blown over, but to have given Guddadhur a chain and gold bangle to give to his (Ramdhun's) wife. The former was found and recognized by the prosecutor, whereby another proof of Ramdhun's guilt was obtained. The circumstances of the finding of the property at Munnoolla's are

also confirmatory of his guilt. The appeal of the above three men is therefore rejected.

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"Mocheeram is a lad of eighteen or nineteen. He has denied his guilt, and stated that he was left by his father Ramdhun on the night in question at the prosecutor's *gola*, while the latter stayed at home on the plea of illness. The discovery of the chain at his father's does not necessarily criminate this prisoner. He was not named in Guddadhur's confession to the magistrate, and only on a leading question being put to him in that before the darogah. It is not improbable that his father should leave him at the *gola* on the pretence of illness, and it is not very likely that he would take such a very young person with him on such an expedition. I am therefore not satisfied of his guilt, and direct his release."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

KURAMUT ALEE.

versus

TEELUK (No. 7), SHEOTABUT (No. 8, APPELLANT), NUKCHED (No. 9) AND MADHO (No. 12.)

1852.

June 9.

Case of SHEOTABUT (appellant) and others.

The conviction by the sessions judge, affirmed on appeal.

CRIME CHARGED.—1st count, Nos. 7 to 9, burglary and theft of property, valued at Company's rupees 550-13-0; 2nd count, accessaries in the above; and 3rd count, Nos. 7 to 9 and 12, having in their possession stolen property, knowing the same to have been stolen.

CRIME ESTABLISHED.—Nos. 7 and 8, accomplices in the theft; No. 9, accessary before the fact, and No. 12, having in his possession stolen property.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 5th February 1852.

Remarks by the sessions judge.—"The following is a short statement of the main facts of this case:—On the 20th December last, the house of the moonsiff of Pursab was robbed of a quantity of valuable property, but no trace was found of the thieves by the officers first deputed to inquire into the thing. A second person, however, being sent, succeeded better, and by his exertions some part of the property stolen was recovered, and some at least of the robbers secured. The prisoner Nukched was the person who first pointed out where some of the stolen articles were placed in the house of the prisoner Madho, after

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Case of SHEOTABUT (appellant) and others.

which he took the police to the house of Sooka* (No. 11,) who gave up two cloths which he had received from the prisoner No. 7, to dye. After this again they proceeded to the house of the prisoner Sheotabut (No. 8,) who also gave up some things which were buried in his house; and again behind the house in which Teeluk (No. 7,) and his father Sheo* (No. 10,) reside; they got some of the plunder which had been hidden there. Both prisoners (Nos. 7 and 8,) confessed to the police and to the magistrate, that they had been engaged in the robbery, and named Nukched as one of the leaders in it; and Madho also said that the things found with him had been placed there by Nukched's wife. These statements they all repeat on their trial, but Nukched himself denies having had any share in the crime, though he does not give, in my opinion, a very satisfactory account (if he really had nothing to do with the thing) as to how he knew where the different articles were placed; and I have no doubt myself, but that he took a leading part in it. The moulvee convicts the prisoners Teeluk and Sheotabut on full proof of being accomplices in the theft, and Nukched on strong suspicion of being accessary to it before the fact, and convicting Madho in the separate charge made against him, he makes them all liable by *tazeer;* and, concurring in the finding, I have sentenced them as noted above, giving Nukched a more severe punishment than the others, as this is not his first offence."

Sentence passed by the lower court.—Nos. 7 and 8, each, five (5) years' imprisonment with labor in irons; No. 9, seven (7) years' imprisonment with labor in irons; and No. 12, two (2) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner No. 8, Sheotabut, has appealed. He pleaded guilty to the charge of theft, though not of burglary, at the trial, and he now urges in appeal that he was prevailed upon by the false representations of the prisoner No. 9 to accompany him, and that he remained at a distance from the house of the prosecutor while the robbery was being committed. This excuse is inadmissible; and I confirm the conviction and sentence of the sessions judge, and reject the appeal."

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* Acquitted by the lower court.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

SREE HURREE SHAM.

1852.

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Case of SREE HURREE SHAM.

Sentence of sixteen years' imprisonment confirmed on conviction of two dacoities with wounding.

CRIME CHARGED.—Dacoity attended with wounding.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J. H. Patton, sessions judge of East Burdwan, on the 12th April 1852.

Remarks by the sessions judge.—"This case is connected with trial No. 2, Statement No. 6, for the month of January last, but disposed of in February last, and its details are briefly the following:—The house of the prosecutor Ramtunnoo Ray, was attacked by a gang of about twenty-five dacoits, and plundered of property to the extent of rupees 94-13-0; one of the dacoits was recognized by the prosecutor and confronted on the top of the stairs leading to the upper apartment of his house, and others of the gang, together with him, laid wait for and secured on their return from the dacoity with part of the plundered property. Some, however, escaped the ambuscade, but were distinctly identified by the party forming it, and among the number the prisoner. He absconded after the occurrence, and was not captured till some time subsequently in another case of dacoity. Nine witnesses were examined on the trial, three of whom proved the fact, four proved the identity of the prisoner at the time of the arrest of his comrades, and two his Mofussil confession. The prisoner pleaded 'not guilty,' and declared himself the victim of ill-will, entertained towards him on the part of the witnesses for the prosecution, but cited no witnesses to his defence. I convict him of dacoity, and consider him obnoxious to the punishment inflicted on the prisoners Bani Madhub Bose* and five others in the trial above referred to; but as he stands committed in the ensuing indictment also, I suspend the sentence till the conclusion of that case."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner Sree Hurree Sham has appealed from his conviction in both the dacoities, *viz.*, that at the house of Ramtunnoo and the subsequent one at Ramjadhob Mookerjee's.

"In the former case several prisoners were previously convicted, and their sentences confirmed by this court on the 7th May last.

* *Vide* Reports of the Nizamut Adawlut for May 1852, *p.* 761.

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Case of SREE HURREE SHAM.

"After much search among the papers in that case, I cannot discover that the prisoner was named at any early stage of the inquiry. The evidence of the witnesses who now depose to recognizing him as he escaped from the capturing party is therefore not trustworthy.

"In the case of dacoity at Ramjadhob's, however, the wounded chowkeedar stated before the capture of the prisoner that he had been in conflict with this person, and that he had wounded him. On his arrest this was found quite true, for he bore a wound on his wrist. He then confessed to the darogah that he had been concerned in both dacoities, and he gave a minute account of both affairs. These confessions have been duly verified. The prisoner, in his appeal, asserts that he did not sign them, and probably, to support the statement, has caused his petition of appeal to be signed very neatly, which his confessions are not. The signatures on the latter, however, tally better with that to his defence in the foujdaree court than with that to the petition. I deem this, therefore, merely a *ruse*, and relying on the confessions and the evidence of Goday Chowkeedar, confirm the sentence passed by the sessions judge."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

BISSONATH KOODREE

versus

MUDHOOSOODUN MUNDUL (No. 1) AND GUNNESSA KHANGY (No. 3).

1852. June 10.

Case of MUDHOOSOODUN MUNDUL and another.

Abduction of a married woman eleven years old with intent to make a prostitute of her. Sentence four years' imprisonment and two hundred and fifty rupees fine, commutable on non-payment, to labor.

Accomplice in attempt to make a prostitute of the said woman sentenced to one year's imprisonment and fifty rupees fine, commutable to labor on a *futwa* of *tazeer*.

Both sentences confirmed in appeal. The case was committed to the sessions by the magistrate of 24-Pergunnahs in consequence of the prevalence of the crime.

CRIME CHARGED.—1st count, Nos. 1 and 3, having enticed Doorga Mony, the wife of the prosecutor, to leave her home, with intent to sell her, the said Doorga Mony, or to make a prostitute of her, or otherwise unlawfully to dispose of her; 2nd count, stealing from the dwelling-house of the prosecutor a sum of money amounting to rupees 295, the property of the said prosecutor; 3rd count, No. 1, receiving the aforesaid property knowing it to be stolen; 4th count, No. 3, accomplice in the offence charged in the 1st count.

CRIME ESTABLISHED.—No. 1, abduction of Doorga Mony, the prosecutor's wife, with the intent to make her a prostitute, or otherwise unlawfully to dispose of her, and No. 3, accomplice after the fact of abduction in attempting to make the above said Doorga Mony a prostitute, or otherwise unlawfully to dispose of her.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 6th April 1852.

Remarks by the additional sessions judge.—"The prosecutor, Bissonath lives at Sonai, near Kidderpore. Dya Raur, (prisoner No. 2,) (acquitted on trial and reported on in Statement No. 8,) lives near him, and was the mistress of Mudhoosoodun (No. 1,) who has visited her since she has gone to live near the prosecutor. Doorga Mony, the wife of Bissonath, is only eleven or twelve years old, and on coming to his home, on the 14th of January last, he found that his wife was gone, and that rupees 295, which had been buried in his house, and of which his wife had been informed, had been dug up and carried off. The next day he was informed by a carpenter, who had heard it in the dock-yard, that she had been taken to Sulkeah. He went there and found that she was at the house of one Narain (witness No. 5,) who had agreed when at Kidderpore to receive her. She had been taken there and given into the charge of Gunnessa (prisoner No. 3,) who is a prostitute living about two miles distant from Narain, but with whom he had been intimate. Doorga Mony was displeased at the manner in which she was treated and a disturbance took place, and the neighbours collect-

1852. June 10. Case of MUDHOOSOODUN MUNDUL and another.

ed; but only those of them who are relatives of Narain were sent as witnesses in the case. The prosecutor having gone to Narain's house remained there during the night, and the next day he got back rupees 119 from Narain, whose conduct appears to have been such that it is fortunate for him that he was not committed for trial. The witnesses Nos. 5 and 6, saw the prisoners Nos. 1 and 3, at the house of Narain, with Doorga Mony, and No. 5 had previously been told by Mudhoosoodun, that he would take her there. Witness No. 7 also supports the evidence of the others against Mudhoosoodun, and No. 9 supports the evidence against Gunnessa. Doorga Mony had deposed that Mudhoosoodun took her to Narain's house; but she came on the second day and wished to withdraw her statement, as she had been taught to say what was not true. Under such circumstance, her evidence could not be received, although the circumstances are all in support of it. Considering that Mudhoosoodun's mistress lived next door to the prosecutor on this side of the Ganges, and that he was with Doorga Mony across the Ganges at the house of Narain, where he had previously said he would take her, I find him guilty of the abduction of Doorga Mony, the prosecutor's wife, with the intent to make her a prostitute or otherwise unlawfully to dispose of her. I find Gunnessa an accomplice *after the fact of abduction* in attempting to make her a prostitute or otherwise unlawfully to dispose of her; and as *this* crime is not particularized in Regulation VII. of 1819, Section II., I have taken the usual *futwa* from the law officer on it, and he declares her punishable by *tazeer*. The money was dug up by the prosecutor's wife, or under her direction, and she was in charge of the house, and had been informed where the money was kept. There is no evidence that can be trusted, that any of the prisoners entered the house of the prosecutor or knew of his treasure until it had been taken from his house by his wife; and it cannot therefore be said to have been stolen."

Sentence passed by the lower court.—No. 1, four (4) years' imprisonment without irons and a fine of rupees two hundred and fifty (250,) or labor; No. 3, one (1) year's imprisonment without irons and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"Both the prisoners have appealed, but I see no reason to interfere with the sentence passed by the additional sessions judge."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

MUSST. WOOLYE

versus

OMED ALEE.

1852.

June 11.

Case of OMED ALEE.

The deceased died from injuries inflicted by the prisoner, who was dissatisfied with the fee offered for his medical attendance on the deceased.

CRIME CHARGED.—Wilful murder of Mahomed Hossein.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 17th May 1852.

Remarks by the officiating sessions judge.—"The plaintiff, Musst. Woolye, the wife of the deceased, deposes that on a day in Cheyt last, which she does not remember, Omed Alee, the defendant, who had been previously doctoring the deceased, came to his house, and asked for payment of money that was due to him, when she offered him two pieces of cloth and a *lotah,* which he refused and asked for more, then began quarrelling with them, and taking up a *dâo* struck deceased with it and ran away. The blow was struck upon the neck of the deceased about six in the evening, and about half-past four in the morning following, he died from the effects of it. That her husband, the deceased, had been attacked with cholera two days previously, and had been attended by the defendant; that he had nearly recovered, and could walk with the help of a stick; when the deceased was wounded he was in the verandah of the north house. The deponent and Soobunja, witness No. 1, were the only people present at the house besides the deceased and the defendant, and deponent was two or three *haths* distant from deceased when he was struck. The defendant took up a *dâo* which was lying near the bed of the deceased with which he had been cutting *ganja,* and which belongs to Soobunja. The defendant struck the deceased about ten blows with a light bamboo and a net-rod before he attacked him with the *dâo.* Recognizes the bamboo, net-rod and *dâo* as the ones with which the defendant assaulted deceased, and points out the defendant Omed Alee. The deceased did not speak after he was wounded. The wound was about three inches long and about two inches broad and deep. The deceased had promised to give the defendant one rupee if he succeeded in curing him of the cholera. Instead of the money deponent wished him to take the cloth and *lotah,* and he was angry on that account, and also because Baber, the grand-son of Soobunja, the cousin of deceased, having been cured by Baroo *koberaj,* the latter had received two copper dishes and a silver

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armlet for his attendance, and consequently been much better paid than the defendant.

"Omed Alee, defendant, confessed having committed the crime with which he was charged in the Mofussil and before the magistrate. He denied his guilt in this court, saying that Baroo had put something into his tobacco which affected his head, and he became unconscious of his acts, and cannot tell what he did whilst under this influence.

"Witness No. 1, Musst. Soobunja, (cousin of the deceased) states that she resided with the deceased and his wife, and that the grand-son, Baber Alee, and her cousin, Mahomed Hossein, were both attacked with cholera on the same day, when the plaintiff brought Omed Alee to attend her husband, and witness brought Baroo, another *koberaj*, to attend her grand-son; both recovered, and witness gave Baroo two copper dishes and a silver armlet for his services; and on the plaintiff, after this, offering the defendant two pieces of cloth and a *lotah*, he became angry, thinking he had not been so well paid as Baroo, and gave the deceased five or six blows with a light bamboo and a net-rod; then taking up a *dâo* he struck deceased on the neck (drawing the *dâo* across) and went away. Mahomed Hossein died from the effects of that wound next morning, and the body was sent into the sudder station. Witness saw the blow struck, and was four or five *haths* distant from the deceased and defendant at the time. The *dâo* belongs to her. Deceased could not speak after he was wounded. There was no previous quarrel between the parties; and witness believes that the sole cause was the anger of the defendant at not being so well paid for his services as his fellow practitioner Baroo had been. Identifies the bamboo, the net-rod, and the *dâo* as the ones with which deceased was assaulted and wounded, and points out the defendant as Omed Alee. Witness No. 2, Baroo *koberaj*, was present, and corroborates all that has been given above in every essential particular, except that he says that the defendant merely struck one blow straight down upon the neck of the deceased, and does not mention that the *dâo* was drawn across the neck, as stated by witness No. 1. Witness No. 3, Chedoo Chowkeedar deposes, that hearing a noise at the house of Soobunja on the day in question, he went there and saw Mahomed Hossein in the northern house and unable to speak; that he had a wound, inflicted by a *dâo*, on his neck, two fingers long, and half a finger deep, and the plaintiff told him that Omed Alee had inflicted the wound and ran away, when witness went after him. He then said that he had wounded deceased because he did not pay him what he owed for curing him. Witnesses Nos. 4 and 5 corroborate the above.

"The assistant surgeon states that when the body of Mahomed Hossein arrived at the station, the greater portion of it had

been devoured by maggots, and as a matter of course he could not tell the cause of death. The darogah reports that when he saw the body, there was a wound on the left side of the neck two fingers in length, one inch in breadth and half a finger deep; and the *sooruthal* is regularly authenticated. The *dáo* with which the wound was inflicted is sharp and weighs half a seer.

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"The assessors return a verdict of wilful murder against Omed Alee, and I concur in that opinion. The passions of the defendant were excited at finding that Baroo had been better paid than himself for the cure he had effected, and by the offer of two paltry pieces of dirty cloth, and a small *lotah*, both not worth at the utmost more than ten to twelve annas, instead of the rupee he had been promised. He commenced an attack upon the deceased with a light stick and ended by seizing a *dáo* and striking him one violent blow on the neck, inflicting a wound from which he died the next morning. He did not repeat the blow; and it is possible that he did not intend to kill the deceased. I think that confinement for life would be an adequate punishment for the offence."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"The prisoner Omed Alee attended the deceased in a medical capacity. Deceased was nearly well, and the wife of deceased offered the prisoner some cloth and a *lotah* for his attendance. The prisoner took offence at this, because another medical man had received more. He got in a passion and beat the sick man with a stick several times and afterwards with the rod of a net; and then taking up a *dáo* which lay near, he cut him with it across the throat. The wound was a serious one; and the sick man died the same night, there is reason to believe, of the wound he received. The prisoner confessed wounding the deceased before the magistrate. I convict the prisoner of the murder of the deceased, and sentence him to imprisonment in transportation for life."

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

GOVERNMENT

versus

KALEECHURN KOTAL SEMANADAR (No. 5) AND PARAN SAMUNT (No. 6).

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Case of KALEECHURN KOTAL SEMANADAR and another.

Conviction of dacoity affirmed.

CRIME CHARGED.—1st count, dacoity attended with wounding; 2nd count, knowingly receiving and having in their possession plundered property acquired by the above dacoity.

CRIME ESTABLISHED.—1st count, dacoity attended with wounding; 2nd count, knowingly receiving and having in their possession plundered property acquired by the above dacoity.

Committing Officer, Mr. G. Hewett, deputy magistrate, with magisterial powers, Cutwa, East Burdwan.

Tried before Mr. J. H. Patton, sessions judge of East Burdwan, on the 26th March 1852.

Remarks by the sessions judge.—"From the evidence adduced in this case, I am much disposed to regard the dacoity as having been planned and executed by the leaders of the prosecuting party, with the aid of the prisoners and others not brought to trial.

"The testimony of the first four witnesses is characterised by a similarity of detail and studied circumstantiality that gives it much the appearance of a taught lesson; and as there is bad blood between the two sections of the village community to which the principal witnesses and the persons committed (released as per Statement No. 8, for the present month) severally belong, I am unable to resist the impression that the former are not pure from the offence of instigating and furthering the perpetration of the dacoity. As regards the prisoners, whatever may have been the origin of the dacoity, there can be no doubt of their participation in it, as they were apprehended in the *mêlée* which took place between the villagers and the dacoits after the latter had left the premises with several articles of the plundered property and marks of injuries received in the conflict. The part they took in the engagement and the manner of their arrest are very circumstantially detailed in the evidence, and leave no doubt on the mind as to their guilt. The prisoner No. 6, Paran Samunt, is described as in the first instance assailing and wounding the witness Haradhun Ghose, with a long pointed bamboo, and receiving from the hands of the witness Ishan Chunder Banerjea, two cuts from an axe and a blow with a club from Haradhun, which felled him to the ground and led to his capture. The prisoner No. 5, Kaleechurn Kotal, is shown to have been struck down by the witness Ram Churn Ghose and

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secured by the witnesses Gunesh Chowkeedar and Paran Sheikh, on the spot. The articles found on the persons of the prisoners when taken, though not easy of identification, were recognized as part of the plundered property and were not claimed by them. The prisoner No. 5 pleads in his defence, that when on his beat he was seized upon by the witnesses for the prosecution, Paran and Ram Churn, and made prisoner, and while in that state assaulted by the witness Haradhun. He calls witnesses to prove his presence at his post during the perpetration of the dacoity. The prisoner No. 6 declares that he was laid hold of by the witnesses Ishan Chunder and Haradhun, carried forcibly away to a plain to the south of the village and there wounded and brought back a prisoner. He also cites witnesses to his defence. Five persons were examined on behalf of the former prisoner and seven on behalf of the latter, but their testimony utterly fails to establish the pleas set up. I did not think it necessary to have the Mofussil confessions of the prisoners attested and filed with the record of the trial, because in effect they are not confessions, being rather a denial of the charge than an admission."

Sentence passed by the lower court.—Each, fourteen (14) years' imprisonment, with hard labor in irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on the prisoners Paran and Kaleechurn."

PRESENT :
SIR R. BARLOW, BART., *Judge*.

HEMDHAREE SINGH
versus
JOBERAJ SINGH.

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Case of JOBERAJ SINGH.

The prisoner was convicted of an offence committed in 1844, his denial of his being really the party accused having been refuted.

CRIME CHARGED.—Riot and assault attended with severe wounding.

CRIME ESTABLISHED.—Riot and assault attended with severe wounding.

Committing Officer, Mr. F. Tucker, magistrate of Tirhoot.

Tried before the Honorable R. Forbes, sessions judge of Tirhoot, on the 8th April 1852.

Remarks by the sessions judge.—"The prisoner, a resident of mouza Ramnuggur, pergunnah Bissareh, in this zillah, was committed on a charge of having been concerned in a case of riot and assault attended with severe wounding, which occurred in mouza Mahomedpore, in October 1844, since when he has managed to evade justice; his apprehension now after so long a period being creditable to the zeal and exertions of Mr. Tucker, the present magistrate. Two prisoners having before been tried and convicted on the same charge in February 1845, the present is in fact a continuation of that trial, and the following is a transcript of the then sessions judge's abstract report of that trial.

"This case was committed owing to the wounds inflicted being of a severe nature. From the statement of the prosecutors and the evidence in the case, the circumstances are as follows:—On Friday the 18th October last, a great crowd of people on the part of Sheonarain and Ooditnarain, the brothers of a certain Roopnarain, whom the chief prosecutor, Hemdharee Singh, has caused to be apprehended and imprisoned by the police, came to the village of Mahomedpore, where the prosecutors reside, and attacked their house. Hemdharee Singh was standing at the door and remonstrated with the rioters: they paid no attention to him, but cut him down with their swords and *garassa*, and severely beat him with clubs as well as his cousin, Doorga Paul Rae, and Kassee Tewaree, who was standing by and endeavoured to prevent the riot. The cause of enmity of Sheonarain and Ooditnarain seems to have been owing to Hemdharee Singh's having been chiefly instrumental in causing the apprehension of their brother Roopnarain, who had absconded from justice in a case of affray with wounding. The above facts were deposed to by four respectable eye-witnesses, who swore they saw the prisoners Bhekdharee Rae and Deendial Rae taking an active part in the riot and wounding and beating the prosecutors.

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From Dr. Bowling's evidence it was proved that Hemdharee Singh had received nine sword wounds on the head and other parts, some of them severe: the two other prosecutors also received wounds but less severe. Prisoners plead 'not guilty' and call several witnesses, but who say little to the purpose. The *futwa* declares the prisoners Bhekdharee Rae and Deendial Rae guilty of the crime libelled, and acquits the two other prisoners Hunsraj Rae and Assa Rae. I agree with this *futwa* and have sentenced the two prisoners found guilty accordingly. As none of the witnesses could state that either of the prisoners Assa Rae or Hunsraj Rae took any active part in the riot and both being very old men they were ordered to be released.

"Four persons adduced as eye-witnesses for the prosecution on the former trial of the case, *viz.*, Ruggobeer Rae, Surubjeet Rae, Mundhata Rae and Bheka Pasban, deposed to having seen Joberaj Singh or Jograj Singh (for he is called both), strike the prosecutor, Hemdharee Singh, a blow with a sword; two of whom, Surubjeet Rae and Bheka Pasban, having been afresh examined both in the foujdaree and this court, have in both made a statement to the same effect, besides identifying the prisoner Joberaj under trial. Of the two other witnesses above-named, one Mundhata Rae has since died; and as the other, Ruggoobeer Rae, before the magistrate, so far retracted his former statement inculpating the prisoner, as to depose that the prisoner Joberaj, whom he was required to identify, resided in Ramnuggur, whereas the party whom he saw wound the prosecutor lived across the river Gunduck, he was not sent up as a witness for the prosecution to this court.

"The prisoner stating, both before the magistrate and in this court his father's name to be Radha Singh, and that he lived in Ramnuggur, pleaded in both 'not guilty'; his defence being that he had nothing whatever to do with this case; that he has all along been at enmity with Sheonarain Singh (the malik and tickadar of mouza Ramnuggur); that the prosecutor and the latter in collusion now seek to implicate him; that the Joberaj Singh who is sought for was a servant of Sheonarain Singh; and that when a warrant was issued to the latter, ordering him to produce the said Joberaj Singh, Sheonarain Singh caused a hut belonging to a gowala to be sold as the house of Joberaj Singh, and that the mark on his (prisoner's) hand was made in splitting a bamboo.

"Regarding the plea set up by the prisoner of his not being the Joberaj Singh sought for, it appears to be fully and satisfactorily disproved by the following evidence and papers on the record, by which his identity as the Joberaj Singh recognized by the two eye-witnesses, Surubjeet Rae and Bheka Pasban, both before the magistrate and in this court as the party they saw

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wounding the prosecutor with a sword is, in my judgment, incontestably established.

"*First.*—On the 18th October 1844, or day after the riot, one Jowahir Pasban, chowkeedar of Pursawah, let in farm to Sheosahye Singh and Konye Singh (originally defendants in the case, but released by the magistrate, and who, cited by the prisoner as his witnesses, stated that they were his relations,) gave notice, on the part of the said tickadars at the Mowah thanna, to the effect that Hemdharee Singh and his brother, with two hundred others, having come to Pursawah, wanted to plunder the house of Bhekdharee Rae, who however concealed himself inside; but his brother Joberaj Singh (the prisoner, and two or three others) having come out of the house, told Hemdharee Singh to desist, on which the latter struck Jograj Singh a blow with a club on the palm of the hand which broke it.

"*Secondly.*—On the same day also Bheka Pasban (one of the eye-witnesses) gave a brief notice at the thanna of the occurrence of the disturbance, on which the darogah on the same day proceeded to the spot, when he took the deposition of the prosecutor Hemdharee Singh, who plainly stated that the name of Jograj Rae residing in Ramnuggur, as having wounded him with a sword.

"*Thirdly.*—The above Jowahir Pasban, cited as a witness before the magistrate by the above-named defendants, Sheosahye and Konye, on being interrogated on the 2nd November 1844, by the magistrate who Jograj Singh, stated to have been wounded but concealing himself was, answered that he (Jograj Singh) was the son of Radha Singh, and lived in Ramnuggur; the name of his father and place of residence which the prisoner himself gave both before the magistrate and in this court.

"*Fourthly.*—In a proceeding of the magistrate of 17th February 1845, an order was passed for inserting the name of Jograj Singh in the Sudder and Mofussil Registers of absconded persons (*buhee furaree*) after obtaining from the thannadar a descriptive roll of the person of Jograj Singh, which latter, dated 24th April 1845, is filed with the record, and in which also the absconded person is entered as the son of Radha Singh, and an inhabitant of mouza Ramnuggur.

"*Fifthly.*—After the issues of repeated *purwannahs* to the police to apprehend and send in the absconded Jograj Singh, in a statement which they made before the jemadar of thanna Mowah, on the 17th December 1851, the above Konye Singh and Munraj Singh (the prisoner's own brother) denying their being maliks, stated that the absconded Joberaj Singh was their relation and brother, which statement Konye Singh signed for himself and the other deponent Munraj Singh.

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"*Sixthly.*—On the issue of stringent orders by the magistrate, in February last, to the thannadar of Mowah to secure and send in the absconded Joberaj Singh, the darogah himself proceeding to the dwelling of the latter in Ramnuggur, took the deposition of his brother, the above-mentioned Munraj Singh, who, on the 16th of that month, admitting that the absconded Joberaj Singh was his own brother, stated that the latter had gone a long while ago on service to zillah Purneah, and engaged to produce him, which he accordingly did before the darogah on the 28th idem.

"The prisoner having cited eight witnesses in his defence, one was reported absent, and the other seven were examined. Two of this latter number, Sheosahye Singh and Konye Singh, relations, (as they themselves deposed) of the prisoner, had originally been defendants in the case, but were released in the foujdaree court. These two persons depose to the existence of enmity between the prisoner and the malik Sheonarain Singh, and state that the Joberaj Singh summoned by the magistrate was a servant of Sheonarain Singh's and lived in the west. This statement, however, of the prisoner's being a resident of a distant part of the country, is at variance with that of one of them, Konye Singh, already noticed, who, in answer to inquiries put to him and Munraj Singh, own brother of the prisoner, signed a statement for himself, and the latter to the effect that the absconded Joberaj Singh was their brother and relation. It, moreover, appears, that the same two witnesses of the prisoner (Sheosahye Singh and Konye Singh) gave in a petition of objection to the magistrate on the 28th January last, in consequence of their property being attached on their failing to produce the prisoner, in which they said not a word of the absconded Joberaj Singh being either a servant of Sheonarain Singh or that he lived in the west. Others of the prisoner's witnesses stated that the Joberaj summoned lived across the Gunduck, and deposing to the existence of enmity being between the prisoner and Sheonarain Singh, stated that the latter and the prosecutor have colluded to implicate the prisoner. They none of them, however, say anything sufficient to exculpate the accused.

"The prisoner dwells much on his alleged plea of enmity between himself and the malik Sheonarain Singh, as accounting for his being falsely and unjustly accused. Whatever, however, may be the present or recent feeling of the malik towards the prisoner, supposing the identity of the latter with the absconded Joberaj Singh to be, as it appears to me, set at rest beyond the possibility of doubt, the presumption is that had the malik and prisoner not been on good terms during the several years the prisoner has managed to escape apprehension, the malik would long ago have surrendered him to justice; for it is in evidence that the prisoner has all along been seen going

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about at Ramnuggur, and the testimony on that point refutes the statement of the prisoner's own brother to the thannadar, of the 16th February last, and above noticed, to the effect that his brother had 'gone a long while ago on service to Purneah.' If, too, the allegation of the prisoner be true, that on his (prisoner's) property being ordered to be sold, the malik Sheonarain Singh only exposed for sale a hut belonging to a gowala, and prevented the prisoner's property from being sold, such a proceeding on the malik's part would still more favor the presumption that so far from being at enmity with the prisoner, he (the malik,) was harbouring and protecting and screening the prisoner from justice.

"The law officer in his *futwa*, fully detailing the grounds of his opinion for considering the identity of the prisoner and his guilt on the charge on which he is arraigned to be fully established, pronounces him liable to discretionary punishment by *tazeer*.

"In this finding I unhesitatingly concur, and being of opinion that both the prisoner's identity and guilt are satisfactorily proved, irrespectively of the fact of his having so long absconded or concealed himself, I have sentenced him to the period of imprisonment awarded to those previously convicted of an equal degree of guilt."

Sentence passed by the lower court.—Four (4) years' imprisonment and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart).—"The prisoner was, amongst others, charged with wounding the prosecutor in October 1844. He was apprehended in February last, and on being put on his trial pleaded 'not 'guilty.'

"The prosecutor and his witnesses, to whom the prisoner was well known, named him in the Mofussil and also before the magistrate and in the sessions court, on the former trial as well as in the present. The prisoner in defence states that the Joberaj concerned in the assault was a servant of Sheonarain Singh, with whom prisoner is at enmity. He has cited several witnesses, who depose that the real offender was the son of Radha Singh and resident of the village Ramnuggur across the Gunduck, not the prisoner.

"The prisoner in his answer calls himself the son of Radha Singh and resident of Ramnuggur, and his witnesses in cross-examination being asked whether there are two persons of the same names, sons of Radha Singh, and residents of Ramnuggur, gave no satisfactory answer. The recognition of the prisoner, his absconding, and his futile attempt to disprove his identification by the prosecutor and witnesses, are all the strongest proofs of his guilt.

"I confirm the sessions judge's sentence."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

SHAMA CHURN ROY

versus

BHAGIE KOOLOO (No. 3), GUNGA CHAMAR (No. 5), DHONYE SHEIKH (No. 6), ALUM SHEIKH (No. 7) AND DOODOO, ALIAS DOOD MULLICK (No. 10).

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Case of BHAGIE KOOLOO and others.

Four prisoners convicted of dacoity on evidence of eye-witnesses alone, and one on a confession of being an accessary before the fact, acquitted on appeal in consequence of strong suspicion.

CRIME CHARGED.—Dacoity at the *cutcherry* house of the prosecutor, attended with the murder of Nowazee Khan, chowkeedar of the *cutcherry*, and plunder of property therefrom to the value of rupees 661-6-0, on the night of the 18th January 1852.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. F. L. Beaufort, magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 17th April 1852.

Remarks by the sessions judge.—" It is in evidence that the *cutcherry* of the prosecutor was broken into at midnight of the 18th January last, by about twenty-five dacoits armed with swords, clubs, &c., and having torches, and that they plundered property as charged.

" Some of the witnesses rushed out as the dacoits went away. The chowkeedar seems to have watched them but not to have taken active steps for their capture during or immediately after the act. He went to the thanna the next morning and deposed to having recognised prisoners Nos. 4 (acquitted,) 5, 6 and 7, and to suspecting No. 10.

" The fact of the murder is not established. The deceased was found dead, and his corpse was sent into the station; but none of the witnesses saw any external marks of violence. The deceased appears to have died of spleen. Prisoner No. 3 was suspected by witness No. 2, and confessed before the police and before the magistrate. Prisoners Nos. 5, 6, 7 and 10 were duly recognised in torch-light by witnesses, and named the morning after the occurrence, and do not disprove their guilt. No. 10 was, moreover, named by No. 3, as chief instigator. He pleads the prosecutor and prisoner No. 3 had spite against him, but the direct evidence of witnesses to the fact preponderates against him.

" Prisoners Nos. 5, 6 and 7 have been before suspected.

" I sentence prisoners Nos. 3, 5, 6, 7 and 10, each to ten (10) years' imprisonment, with labor in irons. I have had to notice an objectionable practice which appears to have prevailed here for several years. The witnesses to the confesssion of prisoner

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No. 3 appear to be persons paid by the zemindars to act as witnesses to attest confessions.

"In several commitments the same individuals were witnesses to confession.

"They cannot be considered independent of the police, being thus kept up for police purposes.

"I tried the case under Act XXIV. of 1843."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The proof against the prisoners noted in the margin is solely the evidence of eye-witnesses to recognition, the most untrustworthy of all proof in a case of dacoity. I have, in many cases which have come before me stated, that it is the general rule of dacoits, that when any person known to the inmates of the house joins a gang, he remains outside on watch, or disguises himself. The inmates of the house are naturally so alarmed, that under the most favorable circumstances they could not be expected to recognize more than one or two dacoits, even if their faces were previously familiar to them and undisguised. It is also a general rule of dacoits to put out their lights in the house robbed, and *before* they leave it. In this case the posecutor, who, excepting the deceased chowkeedar, was the only person in contact with the dacoits, states that he could recognize no one, and that the dacoits had their cheeks tied up with cloths.

5 Gunga Ram.
6 Dhonye.
7 Alum.
10 Doodoo.

"Nevertheless, seven witnesses in the sessions court, eight in the magistrate's, and nine to the darogah, have deposed that they, standing some behind a *gola*, some in a mangoe garden, recognized some of them as many as six dacoits, as they came out of the prosecutor's house *by the light of their torches.*

"It is a singular coincidence that seven witnesses to the magistrate identified or pretended to have identified the same individual (Doodoo Mullick No. 10). Five of them did so in the sessions court; but the sessions judge considered that one of them had perjured himself. Another (Mochay) pointed out first Dhonaye, and secondly, Baboo Ram as Doodoo Mullick. The sessions judge admitted his excuse for this that he could not see clearly. It is surprising that this explanation should have been considered a sufficient exoneration from imputation of perjury, for a person who had deposed to identify these persons in the night. If it was true, the evidence to recognition by so blind a man must have been false.

"The first witness, Gour Copaly, has omitted, from his depositions in the foujdaree and sessions court, the names of two of the persons he had deposed to recognizing before the darogah, *viz.*, Bhowany Ghose and Madary.

"The third witness, Hagoo, has omitted Gholam Alee's name, and two witnesses, Mokeem and Alim, who named him to the darogah, have not been entered in the calendar.

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"The fact of any witnesses having recognized some of the dacoits, is not stated distinctly in the three first reports of the darogah; in one without date, but which was heard by the magistrate on the 25th January, *i. e.*, six days after the dacoity, this is first brought to notice.

"After Bhagie had made a *quasi* confession, two more eye-witnesses, Poroseoollah and Mochay, were brought forward to depose to identifying at the time of the dacoity some others named in this confession, but not included in the previous depositions. This shows that witnesses of the sort were not difficult to be had.

"It is astonishing that none of these circumstances should have excited the suspicions of the magistrate or sessions judge. The evidence, in my opinion, cannot be in the least relied upon.

"The confessions of Bhagie amount to admission of being an accessary before the fact. In both he denies committing the dacoity. They are just the kind of statement, which it may be conceived that an ignorant man might be persuaded to believe would not be prejudicial to himself. In a case especially which offers such strong grounds for suspicion as this, such a confession is not to be trusted.

"The prisoners are acquitted."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

ABDOOL ALEE KHAN SOWDAGUR (No. 4), JOOMMUN KHAN SOWDAGUR (No. 5) AND SHEIKH ISHMAEL SOWDAGUR (No. 6).

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Case of ABDOOL ALEE and others.

The prisoners, itinerant merchants, in a fray which followed their violent demands for payment of what was due to them, having wounded the deceased with fire-arms, so that he died the following day, were convicted, two of them of culpable homicide, and the third of aiding and abetting in culpable homicide.

CRIME CHARGED.—1st count, wilful murder of Raja Probulnarain Singh; and 2nd count, aiding and abetting in the above-mentioned crime.

Committing Officer, Mr. C. W. Mackillop, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 3rd May 1852.

Remarks by the officiating sessions judge.—"The particulars of this case, as gathered from the evidence adduced on the part of the prosecutor, are briefly these:—

"About three months antecedent to the occurrence which forms the subject of this trial, the prisoners, who are cloth merchants and inhabitants of the Behar district, came to Jamturrah, where the deceased (Raja Probulnarain Singh) resided, to recover a sum of money due to them by the deceased Raja, on account of some previous dealings.

"During these three months the prisoners were accommodated with a lodging in the Raja's premises, and about two or three days before the occurrence, they seem to have had an altercation with the Raja's *amlah* regarding the payment of their dues, and to have had their patience taxed beyond the power of endurance.

"It is in evidence that, on the afternoon of the 26th Poos, or 9th January 1852, the Raja proceeded to the tank called Sayer, at a short distance from his residence, for the purpose of bathing; that shortly afterwards Serdaro Khalifa, one of the servants, observing the three prisoners armed with guns and swords going in the direction of the tank, immediately ran to the *cutcherry*, and gave notice of the circumstance to Doorga Churn Mahto, being under the apprehension that they might treat his master with some indignity. Doorga Churn Mahto with four others, who happened to be at the time in the *cutcherry*, hurried off to the Raja's assistance, but before they could reach the place where he was, they heard the report of a gun, and rushing forward were just in time to see the prisoner Joommun Khan discharge a gun at the Raja who staggered and fell, when the prisoner Abdool Alee ran up to him and plunged his knife into his side; the three prisoners then ran off, and the witnesses found the

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Raja lying senseless on the ground, with a gun-shot wound on his head, and a severe wound in his side and hand, which was nearly cut through, when the knife, which it had grasped, was withdrawn. Of the three servants who had accompanied the Raja to the bath, one Chutter Singh was lying wounded with a dangerous sword-cut on his left arm, and Bhyrub Roy and Bhola Mahto with wounds from small shots which had entered their chests and hands, and a fourth person, Sheikh Alum Dwaree, who, on hearing the disturbance was hurrying to the spot and met the prisoners, received two severe sword-cuts from Joommun Khan in the foot, one dividing the foot between the toes for about three inches up the instep, and another on the heel.

"The Raja was removed by his servants to his house, where he lingered in a state of insensibility till the evening of the following day when he expired.

"Information of the attack was immediately conveyed to the thanna of Shehna, which is something less than a mile from Jamturrah, and the darogah and mohurir lost no time in proceeding to the scene of the occurrence. On their way they met the prisoner Joommun Khan, and took him into custody. They afterwards discovered the prisoner Abdool Alee lying under a tree, not far from the tank, with a wound on the front part of the right thigh. Sheikh Ishmael (prisoner No. 6,) effected his escape, but was captured on the 30th January in Maunbhoom.

"From the evidence of the three parties who were in attendance on the Raja at the time, it appears that the three prisoners met the Raja in a mangoe tope close to the tank, where he had been bathing and demanded payment of the amount due to them. The Raja desired them to return with him to the house where he would settle their account. They insisted on having the money then and there, and on being told that that was impossible, Ishmael Sheikh levelled his gun and fired. Bhola Mahto and Bhyrub Roy endeavoured to shield their master by exposing their own persons and received the contents of the gun (small shot) in their chests and hands. Chutter Singh then rushed forward and seized the barrel of the gun when he was cut down by Joommun Khan, who immediately fired at the Raja, and then Abdool Alee stabbed him with a knife in the side.

"The evidence of these three servants and of those who accompanied Doorga Churn Mahto, from the *cutcherry*, is quite consistent. The evidence of the witnesses who examined the wounds of the deceased, and of those who sat on the inquest, is conclusive, and proves beyond a doubt that the Raja died from the effects of the wounds as above described.

"In addition to the direct evidence, it is proved that Joommun Khan was seen going from the direction of the place where the fatal deed was perpetrated, very shortly after the occurrence, with

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a sword and knife stained with blood in his hands; that Alum Khan, a servant in the employ of the prisoner Ishmael Sheikh, was taken into custody in the neighbourhood of the spot, with the matchlock, identified as the property of Joommun Khan, on his shoulder, having the match lighted, and that the flint gun produced in court was found within a few feet of where the prisoner Abdool Alee was lying when apprehended.

"The prisoners have denied throughout that they murdered the Raja, and declare their ignorance of the manner in which he came by his death. They admit that they accosted the Raja on his way back from the tank and requested payment of the amount due to them, but that they were not armed with guns and swords; and Abdool Alee adds that he was attacked by the Raja's people, and shot at, and wounded in the thigh by a bullet which lodged in his leg, and which he fully believed was still there when he was examined by the civil surgeon; but as no ball was then traced, he now supposes that the ball, after penetrating six or eight fingers deep into his thigh must have been forced out by the same way that it entered by the violence of the stream of blood which flowed from the wound.

"The prisoners entertained a *vakeel* of the court to defend them, who, on the completion of the trial, addressed the court on their behalf. He represented *firstly*, that in this case there was no enmity or malice between the parties, and that the prisoners could derive no benefit from destroying the life of the deceased; *secondly*, that after such a wound as was described, it was impossible for a man to have survived twenty-four hours; *thirdly*, that the discrepancies in the evidence in regard to the wound said to have been inflicted by Abdool Alee, *i. e.*, whether it was given before or after the Raja fell, rendered the depositions of the witnesses untrustworthy; *fourthly*, that the statement made by Doorga Churn Mahto, before the magistrate differed from that made in this court, but he offered no specification of the particular points in which they disagreed; *fifthly*, that had the murder occurred, as stated in the case for the prosecution, some one of the relations of the deceased would have come forward either to prosecute or give evidence; *sixthly*, that the evidence of such persons as Nuddiar Chand Doss and Gooroo Churn Doss, who obtained their livelihood by charity, and who happened, as they state, to be by accident in the Raja's *cutcherry* when Serdaro Khalifa entered, was not trustworthy; *seventhly*, that the witnesses to the *sooruthal* were ignorant men, and some of them unable to write; *eighthly*, that the discrepancies in the evidence of the burkundauz and the witnesses to the *sooruthal*, relative to the removal of the body, throws suspicion on the facts of the case; *ninthly*, that as the body was not examined by the doctor, the depositions of the darogah

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and mohurir ought to have been taken, as, *tenthly*, ought that of Nuncoo Baboo.

"The *futwa* of the law officer convicts the prisoner (No. 4,) Abdool Alee, and the prisoner (No. 5,) Joommun Khan, of wilful murder, and prisoner (No. 6,) Ishmael Sheikh, of aiding and abetting in that crime.

"In my opinion the case for the defence, whether I look at the statements made by the prisoners themselves, the depositions of their witnesses, or the address of the pleader, is quite powerless in shaking, in the slightest degree, the conviction, grounded upon the clear, consistent and conclusive evidence for the prosecution, that this murder was committed by the prisoners in the manner described; and therefore, in concurrence with the *futwa*, I would convict them in accordance with the finding of the law officer.

"It must be admitted that the temper and patience of the prisoners had been sorely tried by the unfair treatment they had met with at the Raja's hand, which had detained them at Jamturrah for three months, in the vain hope of recovering the money that had been so long due to them; but such grounds cannot be taken into consideration as extenuating such a foul and atrocious murder. They were merchants of some little substance, and in their sphere of life well to do in the world; and they ought to have known, and indeed did know perfectly well, where to apply for redress; but making every allowance for the circumstances in which they were placed, and giving them the full benefit of such provocation as it appears they met with from the Raja, I would recommend that the prisoners Abdool Alee and Joommun Khan be sentenced to transportation beyond sea for life, and that Sheikh Ishmael be imprisoned for the period of fourteen (14) years with labor in irons.

"This case was originally committed by Mr. G. A. Pepper, who charged the prisoners, in the first instance, with 'affray 'attended with murder;' but from what part of the record he discovered that an affray had taken place, it is difficult to conceive, unless from the solitary fact of Abdool Alee having been wounded; but to my mind it seems perfectly clear that the wound was either self-inflicted, or otherwise inflicted by the Raja's retainers after and in revenge for the murderous attack the prisoners had made upon their master. There certainly was no affray of any kind whatever, and consequently I sent the case back to the magistrate in order to have the charge in the calendar altered into one of wilful murder."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"Cases of this kind are not of unfrequent occurrence in the Cuttack frontier. The jungle Rajas and zemindars, who are ostentatious, though generally needy persons, are in the habit

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of making large purchases from the itinerant up-country traders on long credit, and to secure themselves from loss the traders ask cent. per cent. for their goods. When the day of payment arrives, it is the custom for the creditor to quarter himself on his debtor until the debt or a portion of it is paid, or it is augmented by the purchase of other goods, and it often happens that he threatens to use and does use force to compel his debtor to come to terms with him. I have known many instances of bloodshed and violence. This case originated in similar causes.

"The sessions judge, in concurrence with the *futwa* of his law officer, finds the prisoners guilty of wilful murder.

"The law officer of this court acquits the prisoners. He discredits the evidence for the prosecution as interested and improbable, and entertains suspicion of unfair proceedings on the part of the police. I do not concur in this verdict.

"The law officer doubts the correctness of the inquest, because the body was not sent in for examination to the surgeon, and it is not clear how the wound on the forehead was occasioned, and which wound caused the death of the Raja, but I see no reason to blame the darogah. It appears that the Raja's family, backed by the population of the place, strenuously and factiously opposed his sending the body to the station, on the ground of the loss of caste that would ensue therefrom, and forcibly carried it off and burnt it; and as the law only enjoins the transmission of the body to the surgeon in doubtful cases of death, the darogah would not have been justified in resisting force by force. The darogah examined the wounds when the Raja was alive, though in an insensible state, and held an inquest on the body after his death; and it is satisfactorily established that there were several small gun-shot wounds in the face, a large one on the forehead, apparently that of a ball or slug, and an incised wound on his side, and another in his hand, which was nearly cut through. It seems most probable that the gun was charged with shot, and that a large shot or a slug, which lodged in the head, caused the wound on the forehead, but however that may be, there can be no question that the Raja died from the effects of the wounds he received.

"The evidence of the three servants, who accompanied the Raja to the tank, and of the four others, who hearing the report of the first gun, ran to the Raja's assistance, is clear and consistent, and is strongly corroborated by the testimony of Alum Dwaree, who met the prisoner Joommun as he was coming from the direction of the mangoe grove and was severely wounded by him, and by the fact of the prisoner being arrested a short distance off with a sword and knife stained with blood in his hand.

"I cannot, however, believe that the case occurred as the witnesses themselves wish to make out. They say that the

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prisoners insisted on the payment of the money due to them *then* and *there*, and that on the Raja refusing to comply with their demand, Ishmael Khan, without any more ado, fired at the Raja. They profess ignorance of the manner in which Abdool Alee was wounded.

"There is no reason whatever to believe that they intended to kill the deceased. It is true that they went armed with guns and swords to demand payment of their dues, but it is the habit of these itinerant traders to go armed, and on this occasion, it was natural that they should be armed, as it appears that, tired of dunning the Raja, they had packed their baggage on their horses ready for departure. It would appear that leaving their horses in charge of their servants, they determined to make another and a last effort to get their money. The account given by the prisoner Abdool Alee of the interview seems to me to be the most consistent with probability. It is that he importunately demanded payment of his debt, showed the Raja his promissory note, taxed him with not fulfilling his promise, and threatened to sue him in the court; whereon the Raja got very angry and ordered his servants to beat him. What then followed is a matter of conjecture. The prisoner says that they were not armed and that he was attacked and shot at. This statement is as improbable as is that for the prosecution, that the prisoner, *without provocation,* fired at the Raja. To my mind there can be little doubt that the Raja's servants, if they did not strike the first blow, laid hands on the prisoners, and thus impelled these exasperated men to retaliate in the fearful manner described by the witnesses. The prisoners were the aggressors in insisting on the payment of their debt in the manner they did; their clamor and threats no doubt incensed the Raja, but at the same time they are entitled to the full benefit of the doubt which hangs over the origin of the assault. I convict, therefore, the prisoners Nos. 4 and 5, of the culpable homicide of Raja Probulnarain Singh, and the prisoner Sheikh Ishmeal No. 6, of aiding and abetting in the same, and sentence the former to fourteen (14) years' imprisonment each, with labor and in irons, and the last named to seven (7) years' imprisonment also with labor and in irons.

"The sessions judge had the charge in the calendar very properly altered into one of wilful murder, but the case was certainly one of affray; and a second count, charging the prisoners with an affray attended with the homicide of the Raja and the wounding of Bhyrub Roy and others, should have been added."

PRESENT:

A. J. M, MILLS, Esq., *Officiating Judge.*

PALUN PESHAGUR

versus

RAMJOY NUNDEE (No. 1) AND MONEERAM DASS (No. 3, APPELLANT).

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Case of MONEERAM DASS (appellant) and another.

The prisoner convicted of the guilty receipt of stolen property.

CRIME CHARGED.—1st count, Nos. 1 and 2, theft of property valued at rupees 345-8-0; 2nd count, No. 1, knowingly receiving and possessing property obtained by the above theft; and 3rd count, No. 3, being privy to the above theft.

CRIME ESTABLISHED.—No. 1, theft, and No. 3, knowingly receiving property obtained by theft.

Committing Officer, Mr. R. C. Raikes, magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 22nd April, 1852.

Remarks by the sessions judge.—"The prosecutrix, a prostitute, having left her house for a short time, found on her return that her box had been broken open, and a quantity of ornaments, &c., stolen. A clue to this and the two other cases of theft was obtained by a letter written by prisoner No. 1, in jail for a theft of a similar kind, to his mother, regarding a quantity of property in his house, and with others having been intercepted by the *cutwalee* darogah. The prisoner admitted having written this letter, and the police, acting upon it, went to the prisoner's house and demanded from his brother, No. 2, (acquittal statement) a boy of about ten years of age, the property mentioned, part of which he gave up from a *pitarah* belonging to his brother, and part was given up by No 3, a relative, who had buried a portion of it. No. 1 denied having admitted the theft, and claimed a portion of the property in this case as his own, and after the depositions of two or three of his witnesses had been taken, and they denied all knowledge of the articles, he declined having the evidence of the others taken. No. 3 denied having possession of the property, knowing it to have been stolen, and said that after No. 1 had been imprisoned, his brother, the boy, gave him these articles to keep, part of which he had buried; for No. 1, his cousin, being a thief, he was afraid his house might be searched. The *futwa* of the law officer convicts No. 1 on violent presumption of theft, and No. 3 of knowingly receiving property obtained thereby, in which I concurred, and have considered it necessary to sentence No. 1 to a severer sentence than usual, as he is an old offender and seems to live by thefts of this description. He was first imprisoned for six (6) months, as he says

for running away, on being apprehended for theft, and then for one year and nine months for theft in the house of the naib nazir of the magistrate's court, and was in jail for theft in a prostitute's house when these thefts came to light."

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Case of Moneeram Dass (appellant) and another.

Sentence passed by the lower court.—No. 1, seven (7) years' imprisonment, with labor and irons, being a consolidated sentence for three offences, and No. 3, three (3) years' imprisonment, without irons with labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner Moneeram Dass has appealed. He denied that he received the property with a *guilty* knowledge; but the fact of his having concealed some of the articles is presumptive evidence that he knew how they were acquired; the record fully bears out the justness of the conviction, and I see no reason to interfere with the sentence passed on the prisoner."

PRESENT:

SIR R. BARLOW, BART., *Judge*.

GOVERNMENT

versus

MUDHOO SINGH (No. 1), JEEBUN SINGH (No. 2), MANICK MAHTO (No. 3), DURBAREE MODEE (No. 4), HAREE BHOOEA (No. 5), JOYRAM MODEE (No. 6), JHURREE BHOOEA (No. 7), GOBURDHUN MODEE (No. 8), NEELAH BHOOEA (No. 9), MOTHOOR BHOOEA (No. 10), NEELMONEY RAJPOOTTEEN (No. 11), KUTTEE RAJPOOTTEEN (No. 12) AND DUMOODUR SINGH DIGWUR (No. 13.)

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Case of Mudhoo Singh and others.

The prisoners were convicted of privity to murder after the fact.

CRIME CHARGED.—1st count, Nos. 1 and 2, wilful murder of Kassee Singh; 2nd count, Nos. 1 to 13, accessaries after the fact; and 3rd count, No. 13, wilful concealment of the crime charged in the 1st count, the offender being a police servant.

Committing Officer, Captain G. N. Oakes, first class assistant to the Governor General's Agent, Maunbhoom, Hazareebagh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebagh, on the 8th May 1852.

Remarks by the deputy commissioner.—"A summary of the facts elicited in this case will serve to explain it more clearly than would a mere detail of the meagre evidence obtained from sources other than the admissions and confessions of the prisoners themselves.

"On the morning of the 4th February last, the deceased, Kassee Singh, left his home, taking with him rupees 26, and intending to go to an adjacent village called Hootmora, for the purpose

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of paying rent to his landlord there. That morning a witness, Choona Modee, (whose evidence is given below) saw the deceased going along the road, and shortly afterwards saw the prisoners Mudhoo Singh and Jeebun Singh following in the same direction. After some time these men returned. Jeebun washed himself at a pond where the witness was working and Mudhoo, went into the house. Here it may be noted that the deceased and the prisoners Mudhoo and Jeebun are relatives and inmates of the same dwelling.

" Kassee Singh did not return, and was missing; but it does not appear that for some days any active search was made for him.

" On the 8th February the prisoner Mudhoo informed the darogah that his uncle Kassee Singh was missing, and on the 9th the prisoner appeared at the police station and gave information on oath to the effect that the body of the deceased had been found in the jungle of Doomoorsole village, and that Mudhoo *suspected the people of Doomoorsole.*

" The darogah having been shown the place where the body was found, remarked that there was no appearance of blood having flowed from the wounds, and this led him to suppose that the body had been moved. The neighbouring jungle was therefore searched, and within the bounds of Beliapatr village, near the road, traces of blood covered with earth were discovered. The *goraet* of Beliapatr, Nyan Bhooea (witness No. 11) being then privately questioned, stated that, prior to the alleged finding of the body, the prisoners Mudhoo and Jeebun had induced the prisoners Manick Mahto and others to remove it to Doomoorsole. Upon this information Manick Mahto and others, prisoners Nos. 3 to 10, inclusive, were apprehended, and these all confessed that by desire of Mudhoo and Jeebun, and under oath of secrecy, they had aided in removing the body of the deceased from Jamguria to Doomoorsole, and that Mudhoo had taken a sword that was lying near the body. When these confessions were made, Mudhoo also made a confession to the following purport :—

" ' On the day before Kassee Singh went to Hootmora with ' money, I went to Doorkoo, and Nuffur Jemadar asked me to ' come to his house. I did so, and he having called Anoo ' Sircar, Mudhoo Roy and Doobraj Mahto, asked me when ' Kassee would go with money. I said he will go to-morrow. ' He asked at what time; I replied I don't know, he goes in the ' morning or at noon. He asked how much money does he owe; ' I said, how should I know? Then I came away. Afterwards ' Kassee went with the money; and he not returning, I after ' three days went to old Beliapatr, and near to Nuffer Manjee's ' house I met Mungul Misr, who said to me I will tell you some-

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'thing, take you an oath. I replied, say what it is, what shall 'I swear for? He said swear first that you will never tell it to 'any one. He then swore me at the Kudumsiri Thakooranee's 'and brought me to his house, where I saw Nuffur Jemadar, 'Mudhoo Roy and Anoo Sirkar, who rubbed their hands on my 'head, and Mungul Misr said, I have sworn him; whereon 'they all said, Kassee has been murdered, Doobraj Mahto has 'murdered him; we have let him depart; his body is in the 'border of Jamguria; the body must be taken up and put in 'the Loosabera border; we will give you five rupees. I said give 'me people; they answered where can we find people; take you 'the villagers and throw the body away. Then they gave me two 'rupees and I returned home, and in the evening, having brought 'Harree Bhooea, Goburdhun Modee, Durbaree Modee, Jya 'Modee, Neelah Bhooea, Nyan Bhooea, Jhurree Bhooea, Mo-'thoor Bhooea and Manick Koormee to my house, I swore 'them on copper and *toolsee*, and said Kassee has been mur-'dered, and his body must be thrown away. They said we will 'go; and after this conversation, having brought a pole from 'the house, Manick and Harree Bhooea bound Kassee's body 'with Kassee's cloth, and having slung it on the pole, Jya Modee 'and Manick took it on their shoulders. We then brought the 'body by the border of Mungul Misser's enclosure, through the 'jungle, and not recognizing the Loosabera jungle, threw it into 'the Doomoorsole jungle, and keeping Doomoorsole on our left 'we returned home through the jungle. A sword that belongs 'to our family was lying near the body; I brought it home, 'and in the morning saw that it was bloody, so I washed off the 'blood in the house well, and put it among the other swords 'which are in the veranda of the apartment that faces the west. 'Now at your call, I have brought out this sword; I thought it 'would be bad to tell of the murder all at once, so in order to 'make it known I had a search made, and after that told you '(the darogah) of the murder only. There was no money with 'the body, and of the two rupees given to me, I have spent with 'Goohee, merchant of Purulia, one rupee and seven annas, and 'with Genda Jola of Doorkoo four annas, with Mothoor Bhooea, 'cow-herd, one anna, and with Mudhoo Myra of Purulia, for two 'days, at half an anna, one anna, and at Prosaud Myra's shop in 'Chakooltor for tobacco, one and a quarter anna, and to Manick 'Dome of Doorkoo one and three quarters of an anna. These 'two rupees I have spent. When I washed the sword, Harree 'Bhooea saw me, and except the persons named above, who car-'ried away the body, I called no others. Jeebun Singh went 'with us to remove the body, and after you (the darogah) came 'my uncle Damoodur Singh asked me whether anything was 'found near the body, to which I replied that there was a sword.

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'He said where is it, and then I showed it to him. I did not 'tell him of the removal of the body. I had taken the sword 'from the veranda of our house and had concealed it in a lath 'and plaster wall. When Nuffur Jemadar made inquiry of me, 'besides Anoo Sircar and others, there was no one else present. 'Of my own free-will I make this confession.'

"The prisoners Nos. 2 to 10, inclusive, confess that by desire of the prisoner Mudhoo, No. 1, they aided in removing by night the body of Kassee Singh from Jamguria at Doomoorsole.

"Before the principal assistant the prisoner Mudhoo repeated his confession to the same effect as regards his own share in the matter, but with such difference respecting the other parties named in his first confession as to weaken any suspicion against those persons that might arise from a statement consistent in details, if improbable in fact.

"The evidence before the sessions court is as follows:—

"No. 1, witness Bahadoor Mahto, " 2, " Dhunnoo Mahto, " 3, " Sonatun Manjhee,	—Prove the record of the inquest, which shows that the deceased died by violence.
"No. 4, witness Hurrolal Dass, " 5, " Bulloo Mahto, " 6, " Gocool Mahto,	—Prove the confessions of the prisoners Nos. 1 to 10, before the police officer.
"No. 7, witness Sheikh Bundhoo, " 8, " Nundoram Rowanee.	—Prove the confessions of the prisoners Nos. 1 to 10, before the principal assistant.

"The tenor of these confessions has been stated above.

"No. 9, witness Chunah Modee, states that one day in Magh last, shortly after sunrise, he and Manick Kora were digging at a pond when the deceased Kassee Singh passed that way on the Doomoorsole road and was presently followed by the prisoners Jeebun and Mudhoo Singh. About 8 o'clock they returned. Jeebun bathed in the pond and Mudhoo went towards the house. Witness did not speak to them, did not notice any weapon. Jeebun is Mudhoo's sister's husband. Kassee lived with Dumoodur Singh (the prisoner No. 13) and was his cousin.

"No. 10, witness Munsook Harree, states that one day at noon he was herding cattle at Jamguria jungle and discovered the body of a man covered with a cloth in a ravine. Witness came home and told the prisoner Mudhoo, who said 'hold your 'tongue, you will herd the cattle.' Witness in the evening slept in Damoodur Singh's veranda, and when the night was somewhat advanced, Gobra and Harree Bhooea and Durbari Kora and Jya Kora and Mothoor Bhooea and Jhurree Bhooea came to Dumoodur Singh's house, went in, and stayed for some time, and then went out, whither witness does not know. Late at night they returned,

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awoke witness and smoked tobacco, and witness again slept till the morning, when he found that Jhurree Bhooea was lying by him. Dumoodur Singh was then absent from home. Nyan Bhooea had slept there from the evening. Kassee lived with Dumoodur Singh; they were cousins. Kassee was the elder. He was on good terms with Dumoodur. Witness had not seen Kassee for four days before the discovery of his body.

"No. 11, Nyan Bhooea.—One evening in Magh, the prisoner Mudhoo told witness to call the villagers, and witness called Goburdhun and Harree and Manick and Neelah and Durbaree and others. Mudhoo Singh then swore them, and they went to remove the body. Mudhoo said 'some one or other has killed 'Kassee; don't tell any one, and remove the body.' This was in Dumoodur Singh's enclosure. He was not at home then, Kassee's body was thrown into the Doomoorsole jungle. It was not concealed, witness saw and recognised the body.

"No. 12, witness Lubunghee Harin, states nothing material.

"No. 13, witness Golam Doss.—One day in Phagoon, the prisoner Jeebun came to Doomoorsole, and said that his wife's father's brother, Kassee Singh, had now been missing for some days, and asked for people to aid in a search. Many people went with him and searched through the Doomoorsole jungle, and at a place where two roads met, Jeebun and Mudhoo and others said, let us go back and look a second time; which being done they pointed out in a thicket a body covered with a cloth, and said Kassee has been killed in Mungle Misr's boundary. The body was recognised to be Kassee's, and when the darogah came and uncovered it, it was found that the neck was cut half through, and there being not much blood on the ground, doubts arose, and further search was made, and in a spot near Beliapatr much blood was found. The body was found on the same day that Jeebun spoke of the matter; and it was then apparently five or six days dead. Once before that Jeebun had come to Mungle Misr to see chalks.*

"No. 14, witness Bijoyram Joogee, was called by the prisoner Mudhoo, and went with him and others to search for the body of the deceased. Corroborates the statement of the preceding witness.

"No. 15, witness Runjeet Mahto.—To the same effect.

"No. 16, witness Kristokora.—After nightfall, one day in Magh last, Nyan Bhooea called away the prisoner Durbaree, (No. 4) who is the witness's brother. Late at night Durbaree returned and said that the prisoners Mudhoo and Jeebun had adminis-

* This is a kind of divination. The names or initials of certain deities are arbitrarily inscribed in compartments, and a child or other unlearned person places a bit of chalk in a compartment at random. From the qualities of the inscribed names the turn of events is predicted.

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tered an oath to him, and that Kassee Singh's body had been removed from Jamguria to Doomoorsole.

"No. 17, witness Goohee Korah.—One night in Magh, Nyan Bhooea called witness who sent his brothers Jya and Gobra, (the prisoners Nos. 6 and 8) and after a long time these returned and said that Mudhoo and Jeebun had sworn them, and that Kassee Singh's murdered body had been removed from Jamguria to Doomoorsole.

"Witness No. 18, Musst. Khettee, is the widow of the deceased. This witness states that her husband left his home early one morning, she knows nothing more.

"The prisoner Mudhoo in his defence states that Kassee Singh was his maternal uncle, and prisoner has from a child been brought up in his house, why should he murder him? Kassee Singh used to collect rents from the villages of Doorkoo, Beliapatr and Petia Dehi. One day prisoner went to Doorkoo for a coat that was being made there, and Nuffer Jemadar of Doorkoo called him and said when will your uncle Kassee take money to Hootmora? To which prisoner replied that he did not know, then he asked by what way he would go, and prisoner answered that he would take people with him and go by Jamguria and old Beliapatr. Prisoner then came home, and after that when Kassee went with money and did not return for three or four days, prisoner made search, and Mungul Misr of Doomoorsole swore him at the shrine of the *kudum sreenee deota*, and gave him two rupees and said 'your uncle Kassee is dead, you throw 'him away.' Prisoner refused and then he began to lay hold of his hands and feet; on which, witness being a child and void of understanding, brought the body from Jamguria to Doomoorsole.

"The prisoners Nos. 2 to 10, in their defence, deny being concerned in the murder, but admit that they aided the prisoner Mudhoo in removing the body of Kassee.

"The prisoners Nos. 11 to 13, in their defence, deny any knowledge of the murder. No. 13 was absent from home at the time.

For the defence of prisoner Mudhoo No 1.

Witness	No.	19,............	Know nothing.
"	"	20,............	
"	"	23,............	

For the defence of prisoner No 13.

Witness	No.	26, Nuffer Chunder Ghose.	These prove that the prisoner Damoodur Singh, No. 13, was absent from home about the time of the murder.
"	"	27, Gorah Chand Mahto.	
"	"	28, Kusto Mahto.	
"	"	29, Kubdoo Mahto.	
"	"	30, Roop Singh.	
"	"	31, Gooran Mahto.	
"	"	32, Bhurut Roy.	
"	"	33, Gooroo Churn Mahto.	
"	"	34, Sumbhoo Sirdar.	
"	"	35, Jeetoo Sirdar.	
"	"	36, Nuffur Tabadar.	
"	"	37, Futtoo Chowkeedar.	

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"The jury, whose names and occupations are entered below,* find the prisoners Nos. 1 and 2, guilty of wilful murder. The prisoners Nos. 3 to 10, inclusive guilty of aiding in the removal of the body of the murdered person, Kassee Singh, and the prisoners Nos. 11 to 13, inclusive, 'not guilty.'

"The following are ascertained facts:—That the deceased Kassee Singh left his house in the morning at an early hour; that he was followed by the prisoners Mudhoo and Jeebun; that when Mudhoo was informed that a body had been found, he desired the informant to keep silent; that for two or three days after Kassee's departure no public inquiry was made by Mudhoo and Jeebun respecting their relative, whose prolonged absence should have awakened their fears for his safety; that these two prisoners went by night and, by the help of persons whom they had sworn to secrecy, they removed the body of Kassee from one place to another; that Mudhoo then carried away a sword which was found near the body, and which was bloody; that he washed off the blood, and the weapon, which was not that of a stranger, but belonged to the family, he at first put away among other weapons, and finally concealed it; that he, well knowing that Kassee was dead, gave information to the police that he was missing only, and on the next day gave information of the murder, saying that he suspected the Doomoorsole people, he having himself previously put the body of the deceased into the Doomoorsole border; that he took the police officers to the place where the body lay, and at which place the murder had not been committed, his intention being to draw suspicion if not on other parties, at least away from the truth; that when the facts relative to the clandestine removal of the body had transpired, he told a story which is improbable, to which he has not consistently adhered, and of which he has no proof. He does not say who told him where the body lay, yet he could find it by night.

"The cause of this murder does not appear. That the money the deceased had with him has not been found, does not necessarily indicate that the deceased was murdered and robbed for the money's sake. Any one wishing to raise that inference would take away the money. The prisoners Mudhoo and Jeebun lived with the deceased, members of one family, in the same dwelling, and there is no probability of these prisoners having murdered the deceased for the sake of obtaining the small sum of money which was their joint property. But if the deceased were murdered, as the prisoner Mudhoo alleges he was murdered, by other persons, wherefore did he, Mudhoo, and the prisoner

* Jugmohun Chowdry, *mookhtar.*
Koylass Chunder Chatterjee, *mookhtar.*
Neemy Churn Singhee, *mookhtar.*

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Jeebun engage, as beyond doubt they did engage, in the removal of the body of their murdered relative Kassee, who was the uncle of Mudhoo and the father-in-law of Jeebun, and why is Musst. Khettee, the widow of the deceased, so silent respecting any circumstances attending the disappearance of her husband? These questions cannot be answered, but they raise a presumption that some family dissensions may have occurred. This is, however, mere conjecture; the motives that led to the murder have not been discovered, neither is the actual murderer known.

"The foregoing evidence and circumstances do, nevertheless, bring to my mind sufficient proof that the prisoner Mudhoo Singh was concerned in the murder, and I have no hesitation in finding him guilty of being an accomplice in wilful murder.

"That the prisoner Jeebun was no less concerned in the act is possible, and this is the opinion of the jury, but I do not find against him any such weight of circumstantial evidence as has been found against Mudhoo. The prisoners Nos. 3 to 10, inclusive, namely Manick Mahto (No. 3), Durbaree Modee (No. 4), Harree Bhooea (No. 5), Joyram Modee (No. 6), Jhurree Bhooea (No. 7), Goburdhun Modee (No. 8), Neelah Bhooea (No. 9) and Mothoor Bhooea (No. 10), are by their own admission clearly guilty of being accessaries after the fact, and among these I must class the prisoner Jeebun.

"Against the prisoners Nos. 11 to 13, inclusive, there is no tangible evidence; and I think that these should not have been committed for trial.

"I would accordingly recommend that the prisoner Mudhoo Singh (No. 1), be sentenced to imprisonment for life with hard labor in irons and in transportation beyond sea.

"Though I have classed the prisoner Jeebun (No. 2), among the less culpable offenders, I nevertheless consider that his offence has aggravations that may properly be considered in awarding sentence on him. The deceased was his father-in-law, and it is shown by the evidence of the witness No. 13, that Jeebun took an active part in the endeavour to mislead inquiry. I would, therefore, sentence this prisoner to ten (10) years' imprisonment with hard labor in irons.

"The prisoners Nos. 3 to 10, inclusive, I would sentence to imprisonment for five (5) years each with labor in irons. The reckless facility with which persons of this class engage in such cases as this, may be checked by examples showing that the criminality is not light.

"The prisoners Nos. 11 to 13, inclusive, have been acquitted and discharged."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"The deputy commissioner has furnished a very detailed report in this case. From the record of the courts but

little information is to be derived, save that the prisoner Mudhoo swore the other prisoners to secrecy when he ordered them to remove the corpse of the deceased from one village to another, Doomooorsole, where it was at length found with the head nearly cut off. The prisoners from Nos. 1 to 10, all confessed before the police and the principal assistant to having removed the body from the spot where the deceased was murdered into another village. Why and under what circumstances the deceased was killed, is not shown, nor is there the least trace of the actual perpetrators of the crime. It does not appear that there was any cause of enmity between the deceased and the prisoners; and save that the prisoners Nos. 1 to 10, confess to having removed the body to Doomoorsole, the whole case is a mystery.

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"The prisoner No. 1 took an active part in the concealment of the true circumstances of the murder after the fact and endeavoured to remove the responsibility from one to another locality. The extent of his criminality can only be ascertained from his confessions. I think it will be sufficient to sentence him to seven (7) years' imprisonment with irons and labor. The other prisoners Nos. 2 to 10, confess to having acted under his orders. They must have been fully aware that the deceased had been murdered, for his head was nearly cut off. The body was thrown into a ditch in another village, and might never have been found but for the information given by a young lad, witness No. 11, who was herding cattle. It is necessary, as the deputy commissioner has observed in his letter of reference, to make an example of the prisoners, in order to check the offence of which they are proved guilty. Privity to the murder after the fact is clearly established against them. I therefore confirm his sentence of five (5) years' imprisonment with irons and labor."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

BECHARAM SHAHA

versus

RAM DOME CHOWKEEDAR (No. 22), GUTTEENATH CHATTERJEA (No. 23, APPELLANT), MOHANUND CHOTAR (No. 25) AND MADHUB BAOREE (No 26).

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Case of GUTTEENATH CHATTERJEA (appellant) and others.

The evidence for the prosecution in recognition of the prisoner being considered unsatisfactory, and his Mofussil confession being uncorroborated, he was acquitted.

CRIME CHARGED.—1st count, dacoity attended with wounding in the house of the prosecutor, on the night of the 1st November 1851, or 16th Kartick 1258, from whence property valued at rupees 11-12-0 was plundered; and 2nd count, accomplices in the above-mentioned dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. G. A. Pepper, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 15th April 1852.

Remarks by the officiating sessions judge.—"The prosecutor's house was attacked on the night of the 16th Kartick, or 1st November 1851, by about twenty or twenty-five dacoits, but owing to his vigorous resistance they were only able to carry off the silver ornaments, valued at rupees 11-12-0, which they found on the child of Bholanath Shaha, brother of the prosecutor, who was sleeping by his father's side.

"The darogah of thanna Kishnagore arrived about midnight on the 2nd November, and on the morning of the 3rd commenced the investigation, in which he was assisted by the darogah of thanna Naugooleea, who reached the spot on the same day.

"It appears that the prosecutor and some of his witnesses recognized certain of the dacoits, but did not disclose their names until the arrival of the police, lest, as they state, the dacoits, who are inhabitants of a neighbouring village, should hear of it and abscond.

"The prisoners Nos. 22, 23, 25 and 26 confessed before the darogah, and, with the exception of prisoner No. 23, repeated their statements before the magistrate that they had joined the gang who committed the dacoity.

"No property whatever has been recovered.

"All the prisoners have pleaded 'not guilty' in this court, and have disavowed their previous confessions, which they declare were extorted from them by the police. Two out of the many witnesses who have been called on the part of the defence, deposed to have seen the prisoners beaten and ill-treated by the police, but these persons are near relations of the prisoners, and

from the manner in which their evidence was given, I have no hesitation in pronouncing it untrustworthy. 1852.

I held this trial with the assistance of two assessors, Moulvee Fyzoollah, the law officer of the court, and Baboo Benode Ram Sein, a zemindar of the highest respectability; they both agreed in convicting prisoners Nos. 22, 23, 25 and 26 of dacoity, and acquitting the remaining four prisoners,* and I entirely concur in their finding. I do not question the truth of the story as told by the prisoners in the Mofussil and before the magistrate. I believe that the dacoity was planned and carried out by parties of considerable influence and substance, whose escape from the hands of justice is unsatisfactory and much to be regretted.

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"I entirely concur in the finding of the assessors, and accordingly sentence prisoner No. 22 to ten (10) years' imprisonment, and being a chowkeedar to two (2) years' additional imprisonment in lieu of corporal punishment, altogether twelve (12) years. Prisoner No. 23, a prominent character in the robbery, to ten (10) years' imprisonment, and prisoners Nos. 25 and 26, each to seven (7) years' imprisonment, all with labor in irons.

"I have addressed the superintendent of police, Lower Provinces, regarding the objectionable practice on the part of the darogahs of examining accused parties in the house of the prosecutor."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner Gutteenath Chatterjea has appealed. He was identified by the prosecutor and three witnesess; but I can put no faith in their recognition. The prosecutor deposed to the recognition of thirteen persons. It is not credible that in the alarm of a dacoity he could swear to so many persons, and this supposition is corroborated by his depositions; for before the darogah he recognized Paul Bagdee and Shama Baoree, whereas at the trial he omitted all mention of these persons, and deposed to Ram Kiswur and Mohanund Chotar, whom he did not name to the dorogah. The other witnesses were not examined by the two darogahs until seven days after they arrived at the spot, and five days after the apprehension of the prisoner; and Kelaram says, it did not occur to him that he had seen the prisoner until he heard him acknowledge his guilt to the darogah. The evidence of these witnesses is open to much suspicion, and must be rejected. The prisoner confessed in the Mofussil, but he retracted his confession before the magistrate, and it is not in any way supported by corroborative evidence. Not satisfied with the proof against the prisoner, I acquit him, and direct his release."

* Acquitted by the lower court.

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

GOLUCK CHUNDER DEH, ALIAS GOLUCK DEH.

1852.

June 11.

Case of GOLUCK CHUNDER DEH *alias* GOLUCK DEH.

The prisoner was sentenced under Act XXX. of 1836.

CRIME CHARGED.—Being by profession a thug and belonging to a gang of thugs.

Committing Officer, Lieutenant C. H. Keighly, assistant general superintendent for suppression of thuggee and dacoity, Bengal.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 22nd May 1852.

Remarks by the sessions judge.—"The prisoner is charged under Act XXX. of 1836, with being by profession a thug and belonging to a gang of thugs.

"The prisoner has given a full, and apparently a faithful confession of the number of thuggee expeditions he has been engaged in since he became a thug, the number of crimes committed, and the names of his accomplices in each journey. These confessions have been carefully read over to the prisoner in this court and he pleads guilty to them all, and to his being by profession and pursuit a thug.

"The truth of his confessions are corroborated by the evidence of two witnesses, thug approvers, who initiated him into the mysteries of thuggee and denounced him in their confessions as a thug and were the means of his being arrested.

"The promises authorized in the instructions laid down by Government, promulgated with the Court of Nizamut Adawlut's letter, dated 22nd September 1837, No. 247, have been made to the prisoner, and it therefore only remains to convict him of the charge on which he is arraigned, and I accordingly recommend that a sentence of imprisonment for life be passed on him with a view to his being admitted as a thug approver."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner implicates in his confessions amongst others three individuals, who were known to me in 1834, when magistrate of Pubna, as river thugs; and I have no doubt of the general truth of his statements. I convict the prisoner Goluck Chunder Deh of being by profession a thug, and of belonging to a gang of thugs, and sentence him to be imprisoned for life."

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

MAHTAB GHOSAIN

versus

BYKUNT DOSS (No. 1), GUNGARAM DOSS (No. 2), PURIKIT DOSS (No. 3) AND RAMKISHORE MUNDUL (No. 4.)

1852.

June 11.

Case of BYKUNT DOSS and others.

Conviction and sentence passed upon the prisoners for dacoity, affirmed.

CRIME CHARGED.—1st count, dacoity in the house of Mahtab Ghosain; 2nd count, knowingly receiving plundered property.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. J. C. Dodgson, officiating magistrate of Rajshahye.

Tried before Mr. H. Stainforth, officiating commissioner, with the powers of a sessions judge, Rajshahye, on the 22nd March 1852.

Remarks by the officiating commissioner.—"The prosecutrix's statement is, that in the middle of the night, six persons came to her house, forced open the door, struck her, prevented her from crying out, lighted some of the grass with which her house was thatched, broke open her box, and carried off the property shown in the schedule filed by her to be valued at rupees 184-12-0.

"She told the police that she recognised the witness Sheikh Bawool, No. 18, as one of the dacoits, and the statement of this man, denying participation of the dacoity, but admitting that Bykunt (No. 1) had asked him to join in one, led to the apprehension of the prisoners.

"All the prisoners are proved to have confessed before the police and magistrate having joined in the dacoity, naming each other; and part of the plundered property was found with three, while part is proved to have been pawned by the fourth. Three out of the four alleged that they had been maltreated by the police. Bykunt called witnesses to prove that one of the plundered articles found with him was his own, and that he was a man of good character. Gungaram called witnesses to prove that no property was found when his premises were first searched, and had been placed where it was found by others, and that he had been maltreated. Purikit called witnesses to prove that no property had been found on him, and that he had been maltreated, while Ramkishore, who is proved to have pawned a silver ornament, part of the property plundered, called witnesses to prove him to be of good character, and that he was at enmity with the person who gave up the ornament pledged; but the

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witnesses did not, in any way, support the defence of the prisoners.

"The proved confessions of the prisoners naming each other, and the finding of the plundered property form ample evidence of their guilt, and I have sentenced them to be imprisoned with labor and in irons for the space of seven (7) years."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners have appealed. The defence of the prisoners is in no way supported. There is the clearest evidence of their guilt, and I confirm the conviction and sentences."

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

GOVERNMENT

versus

GOKOOL (No. 13), KHIRODHUR (No. 14), COWER TOWAKUL SAHI (No. 15), RACHEE DASS, ALIAS RACHEE NATH (No. 16), BHOLA, ALIAS BHOLOA (No. 17), KASSY DASS (No. 18), TOOLSEERAM (No. 20), JODHA (No. 21) AND POOHUP SINGH (No. 22).

1852.

June 12.

Case of GOKOOL and others.

The conviction of two of the prisoners set aside; that of the others affirmed.

CRIME CHARGED.—Affray attended with culpable homicide in which Teekun Khan, the uncle of the informant, was killed.

CRIME ESTABLISHED.—Affray attended with culpable homicide in which Teekun, the uncle of the informant, was killed.

Committing Officer, Captain Thomas Simpson, principal assistant to the Governor General's Agent, Hazareebagh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebagh, on the 8th April 1852.

Remarks by the deputy commissioner.—"It appears that on the 12th November last, some people of Paruria village began to cut some rice that belonged to, or was claimed by the people of Gamaria village, and that in consequence of this Poohup Singh, the farmer of the latter village, sent intimation to his landlord, Raja Sewaj Khan, of Jagadi, who therefore sent six men, of whom the deceased Teekun Khan was one, to remonstrate with Raja Dharmdial Singh of Paruria, and so to end the dispute. These six men, with six or eight others of Gamaria, went on the morning of the 13th November to the disputed land, and there found that the Raja Dhurmdial with his sons, the prisoners Nos. 14 and 15, with a body of men from Paruria, were cutting and carrying off the crop. Teekun Khan began to remonstrate with Dharmdial, who then desired his followers to beat Teekun, who was accordingly assaulted by several persons with their hands

only, until the prisoner Gokool, (No. 13), with an iron-bound mace, struck Teekun on the head and fractured his skull, so that he died in a few hours afterwards. One Tirbhubun was also beaten. It was clearly exhibited by evidence of eye-witnesses that the fatal blow was struck by the prisoner No. 13, and that the prisoners Nos. 14, 15, 16, 17, 18, 20, 21, 22 were actively engaged in the fray. They were accordingly convicted in concurrence with the verdict of the jury, and were sentenced as shown, with reference to the provisions of Section II. Regulation VI. of 1828."

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Sentence passed by the lower court.—No. 13, five (5) years' imprisonment, with labor in irons, and Nos. 14 to 22 each, three (3) years' imprisonment, without irons, and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I am not satisfied with the evidence against the prisoners Toolseeram and Jodha; I acquit them of the charge and direct their release. I see no reason to interfere as regards the rest."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

KUMUL KARIGUR

versus

KUREEM PRAMANIK (No. 1), KHAJOO MUNDUL (No. 4, APPELLANT), MUDDUN PRAMANIK (No. 5) AND PAUCHCORRA (No. 6, APPELLANT).

1852. June 12. Case of Khajoo Mundul (appellant) and others.

Appeal against a sentence of seven years' imprisonment for dacoity, and two years' imprisonment for receiving property knowing it to be plundered, rejected. Sentence considered lenient.

CRIME CHARGED.—1st count, Nos. 1, 4 and 5, dacoity in the house of Kumul Karigur; 2nd count, accessary *before* and *after* the fact; 3rd count, Nos. 1, 4 to 6, knowingly receiving plundered property; and 4th count, No. 6 accessary *after* the fact.

CRIME ESTABLISHED.—Nos. 1, 4 and 5, dacoity; and No. 6, knowingly receiving plundered property.

Committing Officer, Baboo Kissory Chand Mitter, deputy magistrate, with magisterial powers, Nattore, Rajshahye.

Tried before Mr. H. Stainforth, officiating commissioner with the powers of a sessions judge, Rajshahye, on the 22nd April 1852.

Remarks by the officiating commissioner.—"On the 1st of March, Kuchoo Karigur, prosecutor's nephew, and an inmate of his *baree*, informed the police, that at midnight of the previous night, he was awakened by his uncle crying out, and saw two or three men breaking open boxes by torch-light in the house in which his uncle was, while three or four men were standing

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Case of KHAJOO MUNDUL (appellant) and others.

outside; that the dacoits struck his uncle with bamboos; that his uncle and he cried out; that the dacoits went off with property to the value of rupees 26-4; that his uncle and he followed the dacoits and secured one, Kurreem, who had stayed behind the rest with some of the stolen property.

"The prosecutor, who bears the marks of having been beaten, made a similar statement.

"Kureem (No. 1), confessed before the police, the deputy magistrate of Nattore, and this court, having joined in the dacoity, but he denied that the property had been found on him. He admitted before the police and deputy magistrate having been previously imprisoned for seven (7) years on account of dacoity.

"Khajoo Mundul (No. 4), Muddun Pramanik (No. 5), are proved to have confessed before the police and deputy magistrate having joined in the dacoity. Before this court they pleaded 'not guilty,' but failed to prove *alibi*.

"Pauchcorra Tacazgur is proved to have confessed before the police and deputy magistrate that he hid in some jungle a cloth which is pointed out, and which is said to have been part of the plundered property, at the request of one Manick (the brother of Seboo acquitted) who was in fear of its being discovered by the police. Before this court he stated, that on the night of the dacoity he was at an Indigo factory, but this plea is no defence.

"The prisoners are sentenced, Kureem to ten (10) years, Khajoo and Muddun each to seven (7) years, and Pauchcorra to two (2) years' imprisonment with labor in irons.

"The deputy magistrate should have required from his record-keeper, and filed with the record a certificate of the previous conviction of Kureem.

"Tried under Act XXIV. of 1843, and the Sudder Court's Circular of the 5th July 1844."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoners Khajoo and Pauchcorra have appealed, but have urged no good grounds for doing so. The proof against them appears full and satisfactory; and I see no reason to interfere with the very lenient sentences passed."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

JUENDEE PRAMANIK

versus

ANNULLA OSTA (No. 1), OOMER MULLA (No. 2), SHERMUT MUNDUL (No. 3), MANICK CAZEE (No. 4), ATTEE PRAMANIK (No. 5), NAZEER MULLA (No. 6) AND KADER MULLA (No. 7).

1852.

June 14.

Case of ANNULLA OSTA and others.

Sentence of fourteen years' imprisonment for dacoity confirmed on faith of circumstantial confessions before the magistrate, and pleas of guilty in the sessions court.

Notice taken of circumstances tending to suspicion that the prosecutor's deposition was taken after the capture of some of the prisoners, and that evidence to recognition had been suborned by police. Copy of remarks therefore sent to the superintendent of police.

CRIME CHARGED.—1st count, Nos. 1 to 7, dacoity with torture; 2nd count, No. 1, knowingly having in possession property obtained by dacoity; and 3rd count, Nos. 1 to 7, privity to the dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. J. C. Dodgson, officiating magistrate of Rajshahye.

Tried before Mr. H. Stainforth, officiating commissioner, with the powers of a sessions judge, Rajshahye, on the 30th April 1852.

Remarks by the officiating commissioner.—"The prisoners and others, in all twenty or twenty-five persons, bearing clubs and four torches, attacked the house of the prosecutor at about midnight of the 16th instant (April), burnt his mother on the upper part of her body, and beat her son with clubs, because they hesitated to show where their money was: and they carried off property to the value of rupees 154-15-9; of which property the value of rupees 14-1-10 has been recovered.

"The prisoners were all recognized by the prosecutor at the time, and by one of the eye-witnesses, while the other eye-witnesses recognized some of them. Property too was found in the house of Annulla (No. 1).

"Annulla alone confessed before the police, but all confessed before the magistrate; and three of them, Oomer (No. 2), Attee Pramanik (No. 5), and Nazeer Mulla (No. 6), confessed before me, while the remainder admitted their foujdaree confessions. None of them called witnesses or made any defence.

"The prisoners have been on these premises convicted of dacoity and sentenced each to fourteen (14) years' imprisonment, with labor and irons in banishment.

"Tried under Act XXIV of 1843, and Sudder Court's Circular of the 5th July 1844."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"Notice of the occurrence of this dacoity was given to the mohurir of the thanna by a chowkeedar and villager on the 17th April. They mentioned nothing of the dacoits having been

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recognized. The darogah was then absent inquiring into another case. He reported his knowledge of the occurrence and departure to the spot on the 18th. In a subsequent report, bearing the same date, he announced that the prosecutor had deposed to recognizing at the time of attack the seven prisoners under trial, and eight others by name, also the son of Bholloo and two sons of Gousy, in all eighteen persons, and that he believed that the father of one of the persons named, *i. e.*, Annulla, was the receiver of the plundered property. Further, that he had searched the prisoners' houses and arrested them; that they had all denied; but that after Annulla's wife had pointed out some of the plundered property, Annulla himself made a confession implicating the prisoners on trial. Lastly, that four witnesses had deposed to recognizing the same individuals as they retreated from the prosecutor's house. Annulla and the persons implicated by him, *i. e.*, the prisoners in the trial, were sent in to the magistrate, and before that officer every one of them confessed to having committed the dacoity.

"The prosecutor before the magistrate deposed to recognizing six out of the seven prisoners. The name of Annulla had by that time escaped his memory; and of the remaining eleven men, mentioned in his Mofussil deposition, not one word was said or question asked him; nor was any explanation required of him at the sessions where he only named *four*.

"The confessions of the prisoners are particularly circumstantial, and bear on the face of them the stamp of truth. Three of the prisoners have even pleaded 'guilty' on the trial at the sessions. Of their guilt there can be no doubt. Their appeal is therefore rejected.

"The proceedings in this case, however, require further notice.

"It is preposterous to suppose that the prosecutor could, as he deposed to the police, have recognized eighteen persons in the act of committing the dacoity. His subsequent depositions prove that he did not, and the confessions of the prisoners show that the gang consisted only of seven persons. Almost equally improbable is it that four persons concealed in mulberry gardens, and behind mangoe trees, could, as they have deposed, recognize, one of them *all* the gang, and the others, several of the dacoits. It is remarkable that the persons implicated by Annulla are those first in order, named in the prosecutor's Mofussil deposition, and that *these* are the *only* persons named in the depositions of the eye-witnesses. I strongly suspect that the darogah obtained some clue against Annulla, which for some reason, probably a very insufficient one, he did not choose to make known; that he searched his house, and, having recovered some of the plundered property, obtained from him a confession revealing the names of his accomplices; that having done this, he persuaded

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the prosecutor to depose to recognizing them as the apparent ground-work of his proceedings; that the accomplices, however, denying their guilt to the darogah, and there being no other proof against them, witnesses were tutored also to depose to recognition. The reason why the prosecutor's Mofussil deposition contains mention of eleven more men than the gang consisted of, is not palpable. Possibly, it was to justify a previous seizure of those eleven men on mere suspicion. It is surprising that the magistrate took no notice of the discrepancy between the prosecutor's Mofussil and foujdaree deposition at the time of examining him.

"As it is desirable that the superintendent of police should be made acquainted with the circumstances of this case, a copy of this note will be sent to him."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

RAM SIRCAR AND GOUR SIRCAR

versus

PATTOO SHEIKH (No. 1), GURRIBOOLLAH SHEIKH (No. 2), ARUJDEE SHEIKH (No. 3) AND MOHURRUM SHEIKH (No. 4).

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The conviction of the prisoners upheld, but it was remarked by the Nizamut Adawlut, that the witnesses for the prosecution should have been subjected to more cross-examination.

CRIME CHARGED.—Dacoity with wounding in the houses of Ram Sircar and Gour Sircar, prosecutors, in which property to the value of rupees 59-14-0, was plundered, and Ram Sircar, the prosecutor, was wounded by some sharp weapon by the prisoner No. 1.

CRIME ESTABLISHED.—Being accomplices in a dacoity attended with wounding.

Committing Officer, Mr. J. J. Ward, joint magistrate of Pubna, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 3rd April 1852.

Remarks by the sessions judge.—"This was a simple case of dacoity committed by a gang of ten or fifteen persons in the house of the prosecutors (brothers), and who were petty *mahajuns.* There is no evidence but recognition of the prisoners by Ram Sircar, the elder brother, and by the three witnesses, neighbours, who on being called by the younger brother to come and assist them, recognized all the prisoners as they left the house, all of whom they knew before. The prosecutor received a slight wound on his forehead, which he stated had been

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inflicted by the prisoner No. 1. From the way that he and the witnesses gave their evidence, I have no reason to doubt the fact of their recognizing all the prisoners, and they deposed to the same effect before the assistant, Mr. Alexander, who proceeded to the spot. No. 1, in his defence, pleaded he had a dispute with the prosecutors about a *nuth*, or nose-ring, sold to them, but they had not paid him the full price. His witnesses, however, know nothing of such sale. The other three pleaded they were good characters, and their witnesses considered them to be so, I have therefore sentenced them as stated in the preceding column, enhancing the punishment of No. 1, as he wounded the prosecutor Ram Sircar. The case was tried under Act XXIV. of 1843, and the Court's Circular Order of the 5th July 1844."

Sentence passed by the lower court.—No. 1, seven (7) years' imprisonment with labor and irons, and Nos. 2, 3 and 4, five (5) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—" I see no reason to interfere. At the same time I observe, that as the only evidence against the prisoners is their recognition by three witnesses at the time of the robbery, it would have been far more satisfactory if the judge had subjected them to a cross-examination to test the truth of their assertions. It is true there is nothing to shake the effect of their depositions, but without cross-examination there never can be."

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT.

versus

RAMJEE GHUTTUCK (No. 1) AND KALEE PERSAUD CHUCKERBUTTY (No. 2).

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CRIME CHARGED.—Swindling Pynoo Bewa out of cash and property to the amount of rupees 100 or thereabout.

CRIME ESTABLISHED.—Swindling Pynoo Bewa, out of cash and property to the amount of rupees 100, or thereabout.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 8th April 1852.

Remarks by the additional sessions judge.—"The prisoners pretended to be fortune-tellers, and that they could get treasure for an old woman called Pynoo Bewa, and induced her to let them put 40 or 50 rupees and some strings of gold beads into a box, which was to remain unopened until they returned. They sent out for water and took out the money and beads and put shards into the box, and afterwards went off. The next day Pynoo discovered her loss and made it known to her neighbours, but not to the police. After about three weeks, on the 14th of February, she saw the prisoner No. 1, and had him apprehended, and owing to what he stated, the prisoner No. 2 was apprehended on the 15th of February. On the 16th of February both the prisoners made depositions before the police; that of Kalee Persaud was first written and he said that he was engaged in committing the crime. The deposition of Ramjee is not satisfactorily proved, as the witnesses could not remember the whole of it. On the 16th February Kalee Persaud made a confession before the magistrate, that he was an accomplice in committing the crime, and on the 17th Ramjee also did so, and said that 11 rupees, which were found on him, were a part of the money which was obtained from Pynoo. There were 13 rupees and a string and a half of gold beads found in the house of Kalee Persaud during his absence. The witnesses of Pynoo say that the beads belong to her; but although the clasp may be capable of recognition, the beads are of a very common kind; the prisoner also claims them, but he had no witnesses to show that they are his.

"The prisoner Ramjee said in his Mofussil confession that he had previously been convicted of a similar offence against one Shama about 8 years ago, and been sentenced to 6 months' imprisonment, and on getting the record of the case from the magis-

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trate's office, I found that on the 16th of October 1846, a man called Ramjee, a brahmin, son of Purmanund, was sentenced for a similar offence to this against one Shama. I believe that this is the same man, who has changed the name of his father. He was then sentenced to imprisonment with labor and irons, but as the crime of swindling is not excepted in the Regulation II. of 1834, Section III, Clause 1, I have commuted the labor to a fine."

Sentence passed by the lower court.—Each two (2) years' imprisonment without irons and a fine of rupees one hundred (100).

"Both the prisoners were also fined rupees one hundred (100), under Act XVI. of 1850."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed by the sessions judge on the prisoners Ramjee and Kalee Persaud."

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

SADHOO CHURN SEIT

versus

CHAURIA.

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Case of CHAURIA.

A prisoner, who had been convicted and sentenced for receiving stolen property, released on recommendation by the deputy commissioner of Hazareebagh, as it had been *proved in* the case of another prisoner, that the property had not been stolen.

CRIME CHARGED.—Knowingly receiving and keeping stolen property.

CRIME ESTABLISHED.—Knowingly receiving and keeping stolen property.

Committing Officer, Captain G. N. Oakes, 1st class assistant to the Governor General's Agent, Maunbhoom, Hazareebagh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebagh, on the 27th November 1851.

The following letter, No. 38, dated 7th June last, was submitted by the deputy commissioner of Hazareebaugh.—"With reference to the orders passed by the Sudder Nizamut Court on the case of the prisoner Sohun, under date the 19th February last,* I think it is my duty to submit the accompanying extracts of evidence relating to another prisoner named Chauria, who was convicted of receiving stolen property and was sentenced to four (4) years' imprisonment on the 27th November 1851.

"Prisoner Sohun, who had been convicted of dacoity by the sessions court, was acquitted by the Sudder Nizamut Court, and having been re-committed on the charge of receiving stolen property, was acquitted thereof on the 27th May last.

"The cases of these two prisoners are so connected that the conviction of Chauria seems to depend on that of Sohun. Chauria

* *Vide* Reports of the Nizamut Adawlut for the month of February, 220.

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maintains that Sohun left the suspected property with him. Sohun says the same thing; and Sohun, having brought evidence to prove that the goods are his own, has been acquitted; therefore, I solicit the court's consideration of Chauria's case with a view to his being acquitted also."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"For the reasons stated by the deputy commissioner, the prisoner Chauria is acquitted, and will be released."

PRESENT:

J. R. COLVIN, Esq., *Judge*.

AMAH

versus

AMANUTOOLLAH (No. 4), MAHABOOLLAH (No. 5), SAHIBUTOOLLAH (No. 6), BURKATOOLLAH (No. 7), DAHOO (No. 8), DANAH (No. 9), BUX (No. 10), JONAB ALEE (No. 11), LAL MAHOMED (No. 12), GOOMANEE (No. 13), MULUNG (No. 14), BOCHA (No. 15), GURBHOO (No. 16), ARJANEE (No. 17), HEDAH (No. 18), PANOOLLAH (No. 19), KRAMUTOOLLAH (No. 20), AGHAREE (No. 21), NUZUR ALEE (No. 22), AMANEE (No. 23), MUHUNGOO (No. 24), JAN ALEE (No. 25) KOODUR (No. 26), SAHAMUTOOLLAH (No. 27) AND BHUTTOO (No. 28).

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Case of AMANUTOOLLAH and others.

Convictions for culpable homicide, with sentences ranging from imprisonment for seven years with labor and irons, to imprisonment for two years with fifty rupees fine, upheld by the Nizamut Adawlut on appeal.

CRIME CHARGED.—Riot attended with homicide of Baboollah, deceased, nephew of the prosecutor.

CRIME ESTABLISHED.—Nos. 4, 5 and 8, riot attended with homicide; Nos. 6, 7 and 9, accomplices in the above riot attended with homicide, and Nos. 10 to 28, aiding and abetting in the above riot attended with homicide.

Committing Officer, Mr. A. E. Russell, officiating magistrate of Purneah.

Tried before Mr. F. Lowth, sessions judge of Purneah, on the 5th March 1852.

Remarks by the sessions judge.—"The prisoners in this case severally pleaded 'not guilty.'

"The facts elicited on the trial, and duly sworn to by the witnesses for the prosecution, are the following:—The prosecutor appears to have purchased *benamee* at an auction sale held at the Kusbah Moonsiff's court, several *jummas* of the prisoners Amanutoollah and Mahaboollah, and among them one *jumma* situated in Bisyedhar, in the name of the prisoner Bux, on which a *kooltee*, or vetch crop was growing. On the morning of the 7th December 1851, or 22nd Aghun 1258 B. S., he re-

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paired to the spot with some of his relatives, a few labourers, and the deceased, for the purpose of gathering in the crop; but whilst so engaged, Amanutoollah, Mahaboollah, with the other prisoners, armed with *lattees* came up and forbade them. An altercation then took place, during which the prosecutor's son, Rahmatoollah and his nephew Kudrutoollah, witness No. 8, observed that, as they were so few in number, it was useless for them to offer any opposition, and therefore it was better for the prosecutor to apply to the foujdaree court, as had been done in a former case relative to a paddy crop of some lands in mouza Gidwass, which had been cut by Amanutoollah and others, and to abide by the decision of the court. To this the prosecutor agreed, and was retiring from the spot, when the deceased remarked that, as they had bought the land, why should they not cut the crop, and that he would do so. He was, however, at last induced to retire with the prosecutor and others, and was in the act of leaving the field where Amanutoollah, No. 4, Mahaboollah, No. 5, and Dahoo, No. 8, successively advanced from the body of rioters, and struck the deceased, each a blow on the head with a club, from the effects of which he fell, when Burkatoollah, No. 7, Sahibutoollah, No. 6, and Danah, No. 9, assaulted him with their fists and kicks. The prosecutor and his party then appear to have called on their opponents to desist; but instead of having such an effect, their entreaties only caused further maltreatment to themselves; the prosecutor receiving four blows on the head from *lattees* from Lal Mahomed, No. 12, Jan Alee, No. 25, Bocha, No. 15 and Gurbhoo, No. 16, and several others on various parts of the body from Amanee, No 23, Arjanee, No. 17, and Mulung, No. 14; whilst his nephew Allemoollah, witness No. 4, on interceding for his uncle, was struck several blows on the arms and body by Kramutoollah, No. 20, Nuzur Alee, No. 22 and Panoollah, No. 19. Mahomed Alee, witness No. 3, another nephew of the prosecutor, also received blows from Arjanee, No. 17, and Hedah, No. 18. The deceased was then removed in a state of insensibility to the prosecutor's house, and died during the night of the fifth day after the mal-treatment above described.

"The deceased appears to have been a hale, middle-aged, man, and to have been in good health previous to this event. The evidence of the witnesses Ramdyal, Runglal, Beharee and Kurumchund, Nos. 9, 10, 11 and 12, however, shows that on the day after the occurrence, though questioned by the police as to the parties who had wounded him, he was unable to give any reply, and though visited by them frequently before his demise, he appeared quite unconscious of what was asked him. The *sooruthal*, dated December 9th 1851, showing the deceased to have received two wounds on the left side of the head, three fingers

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in length, two in width, and half a finger depth, and one on the crown of the head of the same dimensions, and that the deceased was lying in a state of insensibility, was read over and duly attested by the above-named witnesses. The deposition of Dr. Beale, the civil assistant surgeon, was to the effect that on examination of the body of the deceased, he discovered an extensive fracture with depression of the left parietal bone of the skull, and great effusion of blood under the scalp; that the sutures of the skull had been loosened to a considerable extent by the force of the blow, though the scalp had not been divided, and though only one contusion was traceable, yet the effusion, consequent on the injury, was so extensive as to cover nearly the whole of the left side and upper part of the skull. Dr. Beale was of opinion that if more blows than one had been inflicted they must have fallen on nearly the same spot, and that the injury must have been inflicted by a blunt heavy weapon such as a *lattee*, and that the deceased's death was caused thereby. When called on for their defence the prisoners Amanutoollah, Sahibutoollah, Burkatoollah, Danah, Lal Mahomed, Goomanee, Gurbhoo, and Sahamutoollah pleaded *alibis*, and cited witnesses to prove the same.

"Mahaboollah, Dahoo and Arjanee pleaded that they were at their own houses on the day in question, and called witnesses to prove the fact.

"Bux pleaded that the land, respecting the crops of which the riot occurred, had belonged to the prisoners Nos. 4 and 5, but became his property by purchase; that he had cultivated half the field in question with *kooltee*, whilst the prosecutor had, by his permission, cultivated and sown the other half with the same description of grain, entering into an agreement for the division of the crop; that the prisoner had, with four or five other people, gone out to cut his own share, but was obliged to desist in consequence of the prosecutor coming to the spot with his nephews and others, about ten men in number, and maltreating him and his party; that he himself was knocked down by the prosecutor and rendered insensible for awhile; but on seeing others coming to the prosecutor's assistance his senses returned and he got up and ran home; that his son, Nuzur Alee, prisoner No. 22, and brother, Kramutoollah, No. 20, were also on the spot and were kicked and fisticuffed by the prosecutor's party; whilst his nephew Mulung, prisoner No. 14, who had come to his aid, was struck with a sword by some one and wounded on the head. He further pleaded that he had filed a petition in the foujdaree court on this subject, and had taken out a subpœna for the attendance of his witnesses, but hearing that they had all been arrested in the prosecutor's case, the process was not served. To prove the above points, he, however, cited no witnesses; and from the pleas set forth in the defence of Hedah

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and Koodur, prisoners Nos. 18 and 26, who appear to have been cited as his witnesses in the foujdaree court, the prisoner's defence in this court was clearly utterly unworthy of credit.

"Mulung, Kramutoollah, and Nuzur Alee pleaded to the same effect, as noted above, but cited no witnesses. The first prisoner also showed on his forehead a dry scar, like that of the cut of some sharp instrument, but the wound must have been very slight and superficial, and probably self-inflicted by a knife or some such instrument with the view of supporting the plea, and, as proof of the fact was wanting, the plea was deemed altogether undeserving of consideration.

"Jonab Alee and Panoollah pleaded their absence from home on the day in question, the former engaged in grazing his cattle, and the latter in looking after his crops; but neither of them could produce any witnesses to substantiate their pleas.

"Bocha, Hedah, Agharee and Jan Alee pleaded that they were at their homes on the day of the occurrence, and therefore not engaged in the dispute; but called no witnesses to prove the fact.

"Amanee pleaded that he was engaged at the prisoner Jan Alee's house threshing some corn, but could cite no witnesses.

"Mahungoo declared himself to have been similarly employed at the prisoner Mahaboollah's house, and cited some witnesses to depose to the point.

"Koodur and Bhuttoo also pleaded their absence from the scene of action; but failed to produce any proof in support of their pleas or to denote their whereabouts on the day in question.

"Of forty-five witnesses cited for the defence, the prisoners objected to the examination of five, and four were not forthcoming on the trial. The evidence of the remaining thirty-six was to the effect, that on a Sunday, in the month of Aghun, they had seen the prisoners at the various places, and severally engaged as pleaded, but whether that Sunday was at the beginning, middle, or end of the month they were unable sufficiently to depose to. Their evidence was therefore in my opinion untrustworthy and valueless, and rightly rejected by the jury as insufficient to exculpate the prisoners from the charge preferred against them.

"The jury, accordingly, with my concurrence, returned a verdict of guilty against them all. That a riot took place is evident both from the depositions of the witnesses for the prosecution and the defence of the prisoners, Nos. 10, 14, 20 and 22, whilst, by the evidence of eight eye-witnesses to the fact, the presence and participation of all the prisoners arraigned is also equally and most clearly established. Had any proof been adduced on the trial to show that the prosecutor was not the proprietor of the land and crop in question, or that the prosecutor, his

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relatives and adherents, were the aggressors, and had endeavored to take wrongful possession of the property, some doubts might have been entertained as to the truth of the evidence for the prosecution. On the contrary, however, no attempt even was made to throw discredit on the statements of the witnesses in this respect, nor was any proof adduced in support of the alleged title of the prisoner Bux to the property. Further, as the evidence of the medical officer showed the deceased's death to have been caused by the fracture of his skull from injury inflicted by a blunt weapon, such as a *lattee*, and the depositions of the witnesses to the *sooruthal* proved the deceased to have been found and to have continued in a state of insensibility, in consequence of those wounds, up to his decease, and the identification of the prisoners Nos. 4, 5, 8, and 6, 7 and 9, as the principals in the riot, was clearly established, I fully concurred in the jury's verdict, and awarded the heavier punishment to the above parties as principals, and lesser punishment to the rest as aiders and abettors."

Sentence passed by the lower court.—Nos. 4, 5 and 8, each, seven (7) years' imprisonment with labor in irons; Nos. 6, 7 and 9, each, five (5) years' imprisonment with labor and irons; Nos. 10, 12, 14, 15, 16, 20, 22 and 25, each, three (3) years' imprisonment and a fine of rupees seventy-five (75) or labor, and Nos. 11, 13, 17, 18, 19, 21, 23, 24, 26, 22 and 28, each, two (2) years' imprisonment, and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"The prisoners all appeal on merely vague grounds, several of them referring to their witnesses to *alibis*, on which certainly no dependence can be placed. The plea is urged that the deceased, Baboollah, died of severe illness, and that his skull was fractured after death in order to support a false accusation against the prisoners. Of this, however, no attempt at proof was made on the trial, and the man was seen by the police officers while lying wounded and senseless for several days previous to his death. The opinion of the medical officer also, as recorded in this evidence, is that the blows on the skull were the cause of death of the deceased.

"There is no ground for interfering with the convictions and sentences by the sessions judge."

PRESENT:

J. R. COLVIN, Esq., *Judge.*

SUNKER KHEIRWAR

versus

BECHUN.

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Case of BECHUN.

The prisoner had detected two of his cousins, a brother and sister, with whom he had been brought up from childhood, living with them within the same enclosure or family dwelling, in the commission of incest. After some interval, the prisoner deliberately attacked and killed his male cousin while he was asleep. Prisoner convicted of murder, and sentenced, under all the circumstances, to imprisonment for fourteen years with labor and irons.

CRIME CHARGED.—Wilful murder of Kishendial, *alias* Bishoondial.

Committing Officer, Captain W. H. Oakes, principal assistant to the Governor General's Agent, Lohardugga, Hazareebagh.

Tried before Major J. Hannyingto[illegible] deputy commissioner of Hazareebagh, on the 11th March 18[illegible].

Remarks, by the deputy com[illegible]oner.—"The prosecutor stated that one day in Poos last, he being absent from home, the prisoner came to him and told him that his daughter, Musst. Bhooklee, was sick, and asked him to return home, which he did in company with the prisoner. On the way prisoner said that prosecutor's son Kishendial had killed himself with a sword, and on reaching home the prosecutor saw Kishendial lying dead in the street. The prisoner gave information to the police, and after five days the darogah came and held an inquest on the body. The darogah then called the prosecutor and read to him the prisoner's confession, from which prosecutor learned that the prisoner had committed the murder.—Kishendial was about twenty years old. Prosecutor never knew or heard of incestuous intercourse between the deceased and Musst. Bhooklee. She is married and had gone to her father-in-law's house but had returned in April or May last, and had remained ever since. Her husband is fifteen or sixteen years old—she is full grown, and is one or two years younger than the prisoner. The villagers at first said that Kishendial had killed himself. Musst. Bhooklee's husband had been asked to take her away but would not.

"The prisoner pleads 'guilty.'

"No. 1, witness Buxee Khan—Proves that the prisoner was apprehended on the information of Mungul, (witness No. 2).

"No 2, witness Mungul, states that one Monday, in Poos, shortly after sunrise, he heard Kishendial within his house say that Bechun had wounded him and run away. Witness was then in the street and afterwards, when the villagers assembled, witness went and saw the body. On being asked by the darogah witness told this, and Bechun then confessed that he had killed Kishendial because he was intimate with Musst. Bhooklee. Witness proves the record of the inquest. Before that Kishendial was killed, Musst. Bhooklee told witness that her brother

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Kishendial had forced her, and witness forbade Kishendial to act so by his sister. This was ten or twelve days before the murder. Witness was about fifty paces distant from Kishendial when he cried out that the prisoner had wonnded him. There was no one else present. It was noon when the villagers assembled. Till then no one else had gone to the house of the deceased. They were afraid to go. Witness did not see Musst Bhooklee at that time. Witness did not tell any one of what he had heard until the darogah came. Witness saw Bechun early that morning driving away some cattle; did not see him again that day. There was no one in the house when Kishendial cried out. When the people assembled at noon Bechun came also. Bechun and Koolmun went to inform the darogah. There was no consultation about it. Witness did not tell the prosecutor or Bechun of what Musst. Bhooklee had said about Kishendial. Musst. Bhooklee came with the villagers at noon. She said nothing. Witness does not know where she slept on the night of the murder, or where she usually slept. Witness did not see Kishendial; when he cried out he was in the house. Witness went into the house enclosure, and Kishendial then spoke faintly saying that Bechun had murdered him. Witness saw him die. He had come out into the enclosure. The sword now in court belongs to the prosecutor, it was found in the house and was bloody. Kishendial did not say why Bechun had murdered him.

"No. 3, witness Hurdial, is the son of the prosecutor; was absent from home, and was returning one morning when the witness Mungul told him that his brother Kishendial was dead. Witness found the body lying in the enclosure; and shortly after that the prosecutor and Mungul and witness carried the body into the house. The *goraet* and Bechun went to give information to the police, and after three days the darogah came and held an inquest. Witness proves the record of the inquest. Bechun then confessed that he had murdered Kishendial, because Kishendial had forced Musst. Bhooklee. Witness knows nothing of Kishendial having had intercourse with Musst. Bhooklee. The witness Mungul said at once that Bechun had killed Kishendial. Bechun said that the deceased had killed himself. This is Kishendial's sword; it was and is still bloody. Musst. Bhooklee used to sleep at her great aunt's, Musst. Unjooree's, house. Besides Bhooklee, there was no female in the witnesses' house. Musst. Bhooklee never said she had been forced.

"No. 4, witness Jheemul, one morning in Poos the prisoner Bechun came and told witness that his, Bechun's, brother Kishendial had killed himself. Witness then states the circumstances already related. Witness had not before heard of improprieties between Kishendial and Musst. Bhooklee.

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"No. 5, witness Thana, ,, 8, ,, Jhawal, ,, 9, ,, Hunsraj, }—State nothing material in addition to the above.

"No. 11, ,, Bhoolakie, ,, 12, ,, Ghunhoo, }—Prove the confession of the prisoner before the darogah.

"No. 13, witness Warris Alee Khan, ,, 14, ,, Hunooman Sahay, }—Prove the confession of the prisoner before the principal assistant.

"These confessions are to the effect that the prisoner saw his cousins, Kishendial, deceased, and Musst. Bhooklee, committing incest; and prisoner shortly after witnessing the fact, when Musst. Bhooklee had left the house, and Kishendial was asleep, then the prisoner, quietly taking a sword that was in the room, killed the deceased by a sword cut on the belly.

"The prisoner in his defence states that the deceased was forcibly ravishing his sister, Musst. Bhooklee, who called out, and prisoner then removing into the dark room where they were, and taking a sword that was in the room, struck the deceased one blow on the belly so that he died soon afterwards.

"The jury, whose names are entered below,* find the prisoner guilty of culpable homicide.

"The officiating deputy commissioner, Captain Simpson, concurring in this verdict, sentenced the prisoner to be imprisoned for seven (7) years' with labor in irons.

"The Sudder Nizamut Court, on inspection of the monthly returns, quashed† this conviction, and directed the trial to be referred, which is now accordingly done.

"There is, independent of the prisoner's confession, strong presumptive evidence that he committed the murder. The statement of the dying man to the witness Mungul, and the false report made by the prisoner to the father of the deceased, and to the police officer, would suffice for his conviction. The confession of the prisoner therefore only confirms the external proof,

* Lalla Luchminarain, *mookhtar.*
Lalla Gujraj Singh, *mookhtar.*
Lalla Emrit Lall, *mookhtar.*

† *Extract from a letter from the Register of the Nizamut Adawlut to the Deputy Commissioner of Hazareebagh, No.* 149, *dated* 22*nd April* 1852.

"The court having had before them your letter, No. 18, of the 15th instant, submitting the statements connected with the sessions of jail delivery, held by you in the month of March last, and finding that the case of Bechun, No. 1, of Statement No. 6, is clearly one of murder, quash the conviction of culpable homicide, and the sentence of seven (7) years' imprisonment, with labor and irons, passed upon the prisoner on the 11th March last, and direct that you refer the trial in the regular course, expunging the case from Statement No. 6 and entering it in the Register of Trials referred, which you are requested to submit."

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June 16

Case of BECHUN.

and adds a plea in justification. The confessions appear to be, in the main, true, and they show clearly enough that the deceased was not killed in the act, but some time afterwards when he had fallen asleep. There is a bad feature in the case. The defence that Musst. Bhooklee was being violently ravished by her brother is not entitled to credit. This woman was not examined before the sessions court, but before the darogah she admitted that she had more than once had incestuous connexion with the deceased; and before the principal assistant, though she denied the fact of incest, she said that she had told the prisoner that her brother had spoken of it, and prisoner said that when he saw it, he would see to it.

"The prisoner's offence is not justifiable, even according to his own statement; for it was not without deliberation, and the punishment of incest cannot, under any circumstances, be left to any relative, however near, who may chance to discover it. I do not however in this case think it necessary to enhance the sentence formerly passed, and therefore recommend that the prisoner be sentenced to seven (7) years' imprisonment with hard labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"It is clear that, in this case, there was some interval for reflection, even upon the prisoner's own statement, and that the attack and killing were deliberate. On the other hand, the prisoner was a near relation of the family, a cousin of the deceased, and of his sister Musst Bhooklee, and had, it appears, been brought up with them from childhood, and lived within the same enclosure, or family-dwelling. He was naturally much touched, in feeling and honor, by their disgraceful misconduct. Still he could not be in any manner justified for the act of murder, nor can he be exempted from exemplary punishment.

"I sentence him to imprisonment with labor and irons for fourteen (14) years from the date of the sentence of the officiating deputy commissioner, which was cancelled by the former order of the court."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

LUBUN BEWAH

versus

JOOMNAH PARAMANIK.

1852.

June 17.

Case of JOOMNAH PARAMANIK.

Sentence of four years' imprisonment for culpable homicide, in having killed a man in a combat with *arbans* during the mohurrum, reduced to one year's imprisonment with thirty rupees fine, commutable, on non-payment to labor.

CRIME CHARGED.—1st count, murder of Neamuttah Nusha; and 2nd count, culpable homicide of the said Neamuttah Nusha.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. C. E. Lance, officiating joint magistrate of Bograh, Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 5th April 1852.

Remarks by the sessions judge.—"From the statement of the prosecutor on the part of Government, and the evidence adduced, it was proved that, on the night of the 1st November last, during the Mohurrum festival, after a feast given by Jhuroo Purdhan, at which the deceased and prisoner were guests, the prisoner challenged the deceased (they having played at former Mohurrum festivals) to play at *arbans*, which consisted in wielding a long bamboo pole of considerable diameter at bottom, headed by two long iron prongs (to give it impetus) and to strike each other with the butt-end, which (challenge) having been accepted, excited by music which was struck up, they commenced playing at moonlight, before the house, in the presence of an assemblage of persons, when the prisoner, getting first slightly hit on the head by his adversary, became apparently angry, and first struck the deceased a blow on the left side of his body with an *arbans* (weighing 127½ tolahs) which was quickly followed by another violent blow against his chest or near the pit of his stomach, when the deceased fell down insensible, and in a few moments expired, before or after having been carried into his house, which was contiguous to Jhuroo's. Through fear of the consequences, the body was buried by Jhuroo and others the next day, which after ten days was exhumed by the police.

"On examining the body, the medical officer deposed that, though the body was too decomposed to admit of his giving any decided opinion as to the cause of death, there appeared four contusions on it, *viz.*, one above the left temple, a second on the neck and lower jaw below the right ear, a third on the right ribs, and a fourth in the left ribs, which led him to infer that the deceased had met with a violent death.

"The prisoner in his defence resorted to *alibi*, which he could not prove.

"The *futwa* found the prisoner 'guilty,' punishable by *tazeer*, in which I concurred. 1852.

"This practice of play at the Mohurrum appearing highly objectionable, as fraught with danger, ought to be put down, I think, by the magistrate, under the orders of the Nizamut or Government." June 17. Case of JOOMNAH PARAMANIK.

Sentence passed by the lower court.—Four (4) years' imprisonment without irons and a fine of rupees thirty (30) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"I see no reason to interfere with the conviction of the prisoner of culpable homicide, but the sentence of four (4) years' imprisonment appears to be more severe than the offence, under the circumstances, calls for. The period of imprisonment is reduced to one (1) year. That part of the sentence which imposes a fine of rupees thirty (30) commutable, on non-payment, to labor, will stand."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

MOMEEN SIRDAR.

1852. June 17. Case of MOMEEN SIRDAR. Sentence of three years' imprisonment for subornation of perjury confirmed on appeal.

CRIME CHARGED.—1st count, subornation of perjury, in having induced and instigated Autoo Khooloo to depose, on the 24th November 1852, corresponding with the 9th Aghun 1258, on solemn declaration taken instead of an oath before the police officer of thanna Budulgachee, that no dacoity was committed in the house of the said Autoo Khooloo, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Subornation of perjury.

Committing Officer, Mr. C. E. Lance, officiating joint magistrate of Bograh, Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 26th April 1852.

Remarks by the sessions judge.—"From the statement of the prosecutor (on the part of Government) and the evidence adduced, it was proved that the prisoner, the naib of a zemindar, an extensive jotedar, and an influential person, had, in order apparently to prevent a visit of the police at the scene of robbery, whereby his *ryots* would be called away, at a busy season, to give evidence at the thanna in respect to the crime of dacoity, on full evidence, wilfully suborned one Autoo Khooloo (a *ryot* of his, living near to him, whose house had been proved in case No. 8 to have

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Case of MOMEEN SIRDAR.

been, on the 22nd November 1851, dacoited and plundered) to give, on solemn affirmation, a statement to the police, on the 24th November 1851, that no dacoity had occurred whereby his house had been plundered, which he as well as Autoo Khooloo knew to be false.

"The acting joint magistrate had illegally pardoned Autoo Khooloo, witness No. 1, under Section III. Regulation X. of 1824, making him a witness against the prisoner, which, as the prisoner had falsely deposed to the police, he was not only disqualified from being, but perjury is not one of the offences enumerated in the above Regulation for which a prisoner can be pardoned.

"In his defence the prisoner denies the charge; states that he had been absent at the time of the dacoity; that on having heard of the occurrence he returned home and inquired of Gena the particulars, who answered that dacoits had come to Autoo Khooloo's, but not having been able to enter his house had gone away, which he (Gena) had represented to the joint magistrate, having caused Autoo, Audee Chowkeedar and Aumeer Mundul to appear at the thanna.

"The prisoner could not substantiate his defence.

"The *futwa* found the prisoner guilty, considering him liable to punishment by *tazeer;* in which I concurred."

Sentence passed by the lower court.—Three (3) years' imprisonment, without labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.).—"The prisoner appeals, on the ground of his *alibi* pleaded on trial, and that the witnesses for the prosecution do not prove that he instigated Autoo Khooloo to depose on solemn affirmation. The sessions judge states that the *alibi* was not substantiated. It is proved that prisoner instigated Autoo Khooloo to give a false statement at the thanna, and it is well known that such statements are only taken on solemn affirmation. The appeal is groundless and is rejected."

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

NIZAM, SIRDAR BEARER

versus

KOOBEER PARAMANIK (No. 13), ZURREEP PARAMANIK (No. 14) AND TOROO KHAN (No. 15.)

1852.

Case of KOOBEER PARAMANIK and others.

The sentence upon two prisoners confirmed. The third prisoner released.

CRIME CHARGED.—1st count, dacoity with wounding in the house of Nizam Sirdar, prosecutor, in which property to the value of rupees 63-8-6 was plundered, and Tazoo Sirdar, the uncle of the prosecutor, was wounded by the dacoits; and 2nd count, knowingly receiving the aforesaid plundered property.

CRIME ESTABLISHED.—Accomplice in a dacoity attended with wounding.

Committing Officer, Mr. J. J. Ward, joint magistrate of Pubnah, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 8th April 1852.

Remarks by the sessions judge.—"This was a more serious dacoity as regards the treatment of the prosecutor's uncle, who was burnt all over his body. He deposed that he recognized all the prisoners, but this I do not credit. The prisoners, however, all confessed in the Mofussil, and Nos. 13 and 14 repeated their confessions before the joint magistrate, which confessions were proved to have been voluntarily made. Property plundered and claimed by the prosecutor was traced to the prisoners. The articles found, the prisoners also claimed; but the witnesses to the defence did not establish their right to them. I have therefore sentenced them as stated in the preceding column. The trial was held under Act XXIV. of 1843, and the court's Circular Order of the 5th July 1844."

Sentence passed by the lower court.—Each seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere as regards the prisoners Koobeer and Zurreep; but the evidence against the prisoner Toroo Khan appears to me insufficient. One article of property was found in his house, which prosecutor claims, and the evidence to that claim is not satisfactory. I acquit Toroo and direct his release."

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

SHEIKH MAHOMED RAMZÁN

versus

NEMYE, ALIAS NEAMUT MOOLLAH (No. 16) AND SITARAM CHUCKERBUTTY (No. 17).

1852.

June 18.

Case of NEMYE, *alias* NEEAMUT MOOLLAH and another.

The prisoners convicted of going forth in a gang with intent to commit dacoity.

CRIME CHARGED.—1st count, going forth in a gang, being armed with weapons, and attacking, on the night of the 23rd November 1851, corresponding with the 8th Aghun 1258 B. S., the house of the prosecutor, with intent to commit dacoity, and slightly wounding the prosecutor and the witnesses Subcuttoollah and Sheikh Bechoo; and 2nd count, belonging to a gang of dacoits.

CRIME ESTABLISHED.—Going forth in a gang, being armed with weapons, and attacking the house of the prosecutor, with intent to commit dacoity, and slightly wounding the prosecutor and the witnesses Subcuttoollah and Sheikh Bechoo.

Committing Officer, Baboo Jogesh Chundro Ghose, deputy magistrate, (with magisterial powers,) Gurbettah, West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 23rd April 1852.

Remarks by the sessions judge.—"The prosecutor's house was attacked by dacoits on the night of the 23rd November 1851, corresponding with the 8th Aghun 1258 B. S., when he boldly attacked them, sword in hand, and wounded two of them, in various places, though not so severely as might have been expected from the nature of the weapon used, in consequence of accidental obstacles, such as the rafters of the hut, and a board, which interfered with the full sweep thereof. During the conflict the prosecutor's uncles, witnesses Nos. 1, 2 and 3, came out of their sleeping places to see what was the matter, when two of them were struck with *gooleyl* balls in various places, which hurt them at the time and left marks afterwards. Prosecutor also received a blow on his stomach from the same description of missile and a slight stroke from a *lattee*, which he wrenched out of the hand of the striker. None of the dacoits was recognized by the prosecutor or his uncles. Their heads were bound with cloths, and they seem to have been armed with *gooleyls*, *lattees*, and a gun. The chowkeedar was not on his beat when the occurrence took place, and his neglect has somehow been overlooked by the deputy magistrate, with whom I have communicated upon the subject. Notice was given to the thannadar of Bishenpore the next day by the chowkeedar aforesaid. Witness No. 17, and witness No. 5, proceeded to search for the wounded

dacoits. The result was the discovery of the prisoner Nemye, No. 16, with open wounds upon his person, and his confession to the darogah at the village of the prosecutor, where that functionary had *ad interim* arrived. Nemye's confession implicated various persons; among others the prisoner No. 17, as being the other dacoit wounded by the prosecutor, whereupon he was sought for and eventually captured by witness No. 6, with open wounds upon his person. Both prisoners confessed in the Mofussil, but only No. 16 before the deputy magistrate, to whom No. 17 pretended, that he had not been at the dacoity, and that the wounds he had upon his person were the consequences of a fall from a toddy tree in which the toddy knife struck his nose, &c.

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June 18.

Case of NEMYE, *alias* NEAMUT MOOLLAH, and another.

"The confessions of both prisoners and the *sooruthal*, fresh state of their wounds, &c., were duly proved by the proper witnesses. Both prisoners pleaded 'not guilty.' No. 16 denied his two confessions, and said that he had merely gone to the prosecutor's house with one Neamut Kazee, for some purpose not explained, when the prosecutor attacked and wounded him. No. 17 denied his Mofussil confession, repeated the story of the toddy tree, and added that he had been tortured by the darogah's orders to induce confession. The witnesses named by both gave no support to their defence, and I, therefore, considered the crime charged in the first count satisfactorily proven against them by their own confessions, supported by the evidence adduced on the part of the prosecution, and the nature and state of their wounds when captured, and sentenced them as noted.

"There was nothing to show *distinctly* that the prisoners belonged to a band of dacoits, by *profession*, though there was strong reason *to suspect* that such was the case.

"During the course of the trial, I was obliged to make witness No. 11, Khetoo Doss, over to the magistrate to take his trial for deliberate perjury."

Sentence passed by the lower court.—Each ten (10) years' imprisonment, with labor and irons, and two (2) years' more in lieu of stripes, altogether twelve (12) years' imprisonment each.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on the prisoners Nemye and Sitaram."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

ROOPAH FUQEER.

1852.

June 18.

Case of ROOPAH FUQEER.

Sentence of ten years' imprisonment for wounding, with intent to murder, a woman, who refused to marry the prisoner, confirmed on appeal as by no means severe.

CRIME CHARGED.—1st count, having, on the 18th August 1851, corresponding with the 3rd Bhadoon 1258, assaulted and wounded with a sickle Purteemah Bewah, with intent to murder the said Purteemah Bewah; and 2nd count, having robbed the said Purteemah Bewah of ornaments to the value of rupees 33-8.

CRIME ESTABLISHED.—Having assaulted and wounded with a sickle, with intent to murder.

Committing Officer, Mr. R. P. Harrison, joint magistrate of Bograh, Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 1st April 1852.

Remarks by the sessions judge.—"From the statement of the prosecutor on the part of Government and the evidence of witnesses Nos. 1, 2, 3 and 12, and the circumstances of the prisoner having absconded and after a long interval surrendered himself to the joint magistrate, it was proved that the prisoner (a married man with children, who had long maintained an adulterous intercourse with Musst. Purteemah, whom he had attempted to murder, a widow of some substance, who lived at a distance across some water, from whom he had been in the habit of borrowing or trading with money belonging to her) had sent, on the 17th August, his servant Beng by water to fetch Purteemah Bewah under pretence of paying what he owed her, who (Purteemah) went, the same day, to his house, accompanied by a female neighbour (witness No. 3), when it was calculated that she had to receive from him (prisoner) rupees 300. On the following day, on her wishing to return home, the prisoner said she should not, if it cost him his life, and told her she must marry him (by *nikah*), which, for reasons given, she positively refused to do. He then took her to the compartment, the door of which faced the south, and on further vainly urging her to marry him, threw her down on her left side, and taking up a sickle, put his knee upon her right side, and, gagging her mouth, drew the sickle across her throat, leaving her insensible.

"After this, the prisoner sent to her home for her son (witness No. 2), on the plea that his mother was ill, and wished to see him. On arrival witness No. 2, on asking his mother, in the prisoner's presence, who had cut her throat, *she pointed to the prisoner.* The same night, the prisoner put Purteemah into a

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boat in order to take her home, when she was accompanied by witnesses Nos. 2 and 3, and by the prisoner and two servants of his. Prisoner took her in the boat as near to her house as it could proceed, which was within about 160 yards of it, then caused her to be put down on the bank and went off with the boat and his servants in it, saying he would sink the boat and return, but *never came back*. Witness No. 3 then went home (while witness No. 2 remained with his mother) and got villagers and took her home.

"On information being received at the thanna, the darogah came to the spot, saw the wounded woman, who could not speak, and had her immediately conveyed to the sudder station, where (23rd August) she was attended by the medical officer, and was unable to speak, and it was not until the 6th September following that she was enabled to depose before the joint magistrate, implicating the prisoner as the person who had inflicted the wound on her throat with a view to murder her.

"Three days after the event, (21st August) on the prisoner seeing the darogah coming to his house by water, *he fled with his servant Beng*, surrendering himself to the joint magistrate on the 11th October (a month and twenty days from the date of his flight), presenting a petition and stating that the woman had self-inflicted the wound on her throat, because she wanted to marry him and he would not consent, while he alleged in his charge before the joint magistrate on the 13th October that she had wounded herself because *he* wanted to marry her.

"The medical officer deposed on the trial, in respect to the wound on the woman's throat, that she had an irregular incised wound, three inches and a half in length, across the throat, completely dividing the wind-pipe; that she could not articulate at all when he first saw her; that she was much exhausted from loss of blood and want of proper sustenance, having only been able to swallow a little milk at a time; that the expectoration came from the wound in the wind-pipe and not through the mouth; that she was in a most dangerous state. The wound he supposed to have been inflicted with an edged instrument, not very sharp, from the cut being irregular and not clean, and thinks it must have been effected by more than one cut. He thinks *she could not have inflicted such a wound herself with the sickle produced on the trial* with which it was done, owing to the *length* and *depth* of the wound and the *nature of the* weapon, it not being sharp, and being of a *length that she could not have cut into the wind-pipe with it*.

"The woman has recovered, but her voice is still very weak.

"The prisoner in his defence denied the charge, alleging that Purteemah Bewah cut her own throat, because he, (prisoner,) would not marry her, which he called two witnesses to prove; one

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of whom (a near relative) deposed to the fact of her having cut her throat, whose testimony, as being entirely unsupported by other evidence summoned, was wholly discredited.

"The *futwa* of the law officer found, on violent presumption, the prisoner guilty of the charge, and considered him liable to punishment by *tazeer;* in which finding concurring, I sentenced the prisoner to a severe measure of punishment, under Regulation XII. of 1829, Section III."

Sentence passed by the lower court.—Ten (10) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner in appeal urges, as he did in the lower courts, that Purteemah cut her own throat.

"At the eleventh hour, *i. e.*, at the sessions court, his uncle came forward and deposed that he saw her do it. He was not even cited by the prisoner before or on committal. Another witness states that, Purteemah told her immediately after the occurrence that she cut her own throat.

"Her wind-pipe was at this time severed and she had no power of speech. The depositions of these witnesses cannot be believed.

"I find no reason to interfere with the sentence of the sessions judge, which is by no means severe for such a cold-blooded outrage, endangering as it did the life of the sufferer."

PRESENT :

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT

versus

SOROOP CHUNDER BISWAS (No. 11) AND SHEIKH PANCHOO (No. 12).

1852. June 19.

Case of SOROOP CHUNDER BISWAS and another.

Sentence affirmed on appeal.

CRIME CHARGED.—Riotously assembling and attacking the houses of Sheikh Zureepoollah, Gureebpollah, Ameeruddeen and Kullumdee, in open day, and plundering their property and cattle, valued at rupees 149-14-6.

CRIME ESTABLISHED.—Riotously attacking houses and carrying off cattle.

Committing Officer, Mr. J. J. Ward, joint magistrate of Pubna, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 5th April 1852.

Remarks by the sessions judge.—"The following particulars of this outrage were given in Statement No. 6, for December* last, when two prisoners were arraigned on the same charge.

"'This was a wanton case of cattle-lifting by the dependents 'of the Hazleebut factory. Why or on what account they were 'taken has not been ascertained. Both prisoners were convicted 'of the charge by the *futwa;* and concurring, I have sentenced 'them to the same punishment as if they had stolen the cattle, '(three (3) years' imprisonment) adjudging a fine in lieu of labor 'as regards No. 15, as he has been sentenced to less than five '(5) years' imprisonment. No. 19 I have sentenced to six (6) 'years' imprisonment for the three cases, as there can be no 'doubt of his being by profession a *latteeal.*'

"The evidence establishing the charge against the prisoners in this case, they have been sentenced as stated in the preceding column. I may, however, mention that they had been previously sentenced by the joint magistrate, on the 9th January 1852, to one (1) year's imprisonment, and rupees two hundred (200) fine, or another year, and rupees fifty (50) in lieu of labor under Regulation VIII. of 1828; but as I considered their offence (plundering and cattle-lifting or carrying off cattle forcibly) not punishable as an affray under Regulation VIII. of 1828 and Construction No. 1154, explaining that the Regulation only applied to cases of affray 'regarding lands and *their produce,*' I quashed the joint magistrate's conviction and directed him to pass a proper order. Hence the commitment and present trial."

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* *Vide* trial of Bawool Mundul and another, *p.* 723, of the Reports for May 1852.

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Case of SUROOP CHUNDER BISWAS and another.

Sentence passed by the lower court.—Nos. 11 and 12, imprisonment for two (2) years and nine (9) months without irons, and a fine of rupees one hundred (100) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere with the sentence passed on Soroop Chunder and Sheikh Panchoo."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

BALAH MAHOMED (No. 1), MOUN NUSHA (No. 2), RUJEH NUSHA (No. 3), BYSAKH NUSHA (No. 5), BHENDERAP NUSHA (No. 6), FOOL MAHOMED (No. 7), CHOOLEEAH (No. 8), HUBEEBOOLLAH (No. 9) AND JONAKOO NUSHA (No. 10).

1852.

June 21.

Case of BALAH MAHOMED and others.

Two prisoners acquitted. Seven convicted of wounding parties at the time in the discharge of their duty, sentenced to imprisonment with irons and labor for five years.

CRIME CHARGED.—1st count, Nos. 1, 2, 3, 5 and 6, wilful murder; 2nd count, being accomplices in the same; and 3rd count, Nos. 1, 2, 3 and 5 to 10, tumultuously assembling and wounding Panchkouree and Fool Mahomed.

Committing Officer, Mr. A. G. Macdonald, magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 17th May 1852.

Remarks by the sessions judge.—"From the statement of the prosecutor, on the part of Government, it appeared that Balah Mahomed, prisoner No. 1, was the under-tenant of Punchoo Mundul; that on Tuesday morning the 18th November last, Panchkouree and Fool Mahomed (witnesses Nos. 4 and 5), and others, people on the part of Punchoo Mundul, accompained by Wulee Mahomed (witness No. 15), a muzkooree peada of the *pharee* of Fool Koonwur, went to attach the crops of prisoner above stated, under Regulation V. of 1812; and that on their attempting to attach his bamboos, prisoners Nos. 1 to 10 of the calendar, armed with clubs, and many others attacked the attaching party, when Fool Mahomed and Panchkouree, above stated, became wounded; that the prisoners then dispersed; that on the same day one Gunganarain Doss, a servant of Punchoo Mundul, complained at the *pharee;* that on the following day another complaint was lodged by one Bhedoo, on the part of prisoner No. 1, to the effect that, on the preceding day Punchoo Mundul with Alee Mahomed, a muzkooree peada, and many others, armed with clubs, had attacked the

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Case of BALAH MAHOMED and others.

house of prisoner No. 1, and had begun to cut down his bamboos and crops, when Arz Mahomed (the person murdered), an alleged adopted son of prisoner No, 1, with whom he (Arz) lived having remonstrated, the attacking party beat and murdered him. Prosecutor states that the police then went to the spot and found the dead body of Arz Mahomed in the room of the house of prisoner No. 1, the door of which faced the east, and held an inquest on it; when on the head, throat, neck and on places in the corner of the eye, marks of violence were visible; that the body was sent into the sudder station, but arrived in too decomposed a state for surgical examination; that on the inquiry of the police, the complaint of Punchoo Mundul was proved, while that on the part of prisoner No. 1 was not established, it being apparent that the prisoner Balah Mahomed, No. 1, in order to get Punchoo Mundul punished, had, in concert with prisoners Nos. 2 to 6 (No. 4 of the calendar having died sinee commitment) killed Arz Mahomed, and with a view to the conviction of Punchoo Mundul of the crime, had preferred a complaint against him to the police *pharee;* and that all the prisoners, with the exception of No. 4, deceased and No. 10 had confessed at the *pharee* to privity to the murder of the deceased Arz Mahomed; and that by the evidence of Panchkouree and Fool Mahomed, (witnesses Nos. 4 and 5) the third count of the calendar was proved against all the prisoners, and was corroborated by the testimony of witnesses Nos. 6 to 15, and that the evidence of witnesses Nos. 1 to 3 convicted prisoners Nos. 1, 2, 3, 5 and 6, of complicity in the wilful murder of Arz Mahomed; and that the inquest was proved by the subscribing witnesses to it.

Witnesses to the fact.
1, Patnee Bewa.
2, Nuzur Mahomed.
3, Dopuhur-oah.

"These three witnesses to the fact are near neighbours of the prisoner Balah Mahomed, and positively depose to having separately gone to the house of Balah, at about the third *puhur* of the day of the event, and distinctly seen him and the prisoners Nos. 2 to 6, (No. 4, of the calendar having died since commitment, in the eastern side of the room, the door of which faced the south, which had been divided off by a matted wall) collectively engaged in killing the deceased Arz Mahomed (who lived in the house of Balah), by a bamboo having been placed under his neck while a club was violently pressed down on his throat by the prisoners Balah and Moun, one or other of the prisoners either holding the deceased's head or his hands and feet, or standing by looking on; and that, when they, (witnesses,) left the yard through fear, or were driven away, the deceased was in a dying state.

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"At the inquest held on the body two days after, it was borne in evidence that the deceased, who appeared to have been about thirty or thirty-two years of age, and had been a spare man, had two severe wounds, as from a club, on the right side of the head, and that there was a mark of violence under each eye, and some small marks of violence on the throat and collar bone.

Inquest.

"Witness No. 4 deposes to all the prisoners having tumultuously assembled near the bamboo clump, which he (witness) with others had come to attach on the part of Punchoo Mundul as the property of Balah Mahomed, when he (witness) was knocked down by a blow on the head with a club by prisoner No. 2, after which he was struck by prisoners Nos. 1, 6 and 8, and rendered insensible. Witness deposes also to having seen Fool Mahomed assaulted by prisoner No. 7, before he (witness) became assaulted.

Panchkouree, witness No. 4.

"Witness No. 5 deposes, that on Balah Mahomed and Audharoo, (absconded,) giving the order, prisoner No. 2 struck Panchkouree a blow on the head with a club, which knocked him down, and that on his (witness) remonstrating, Balah Mhomed ordered him (witness) to be beaten, when Fool Mahomed (prisoner No. 7), struck him with a club on the left arm, which caused it to bleed, and from which he fell. After which all the prisoners began to beat him (witness) and Panchkouree (witness No. 4.) The prisoners then left on plea of searching for one Thona, in the house of Jan Mahomed.

Fool Mahomed, No. 5.

"This witness deposes that he came with others on the part of Punchoo Mundul to attach the *dhan* of prisoner No. 1 for arrears of rent due to Punchoo, and were about to attach a clump of bamboos, said by some to belong to prisoner No. 2 while others said they belonged to prisoner No. 1, when prisoner No. 1 appeared at the spot with the rest of the prisoners and others, and ordered them, with abuse, to beat the attaching party; when prisoner No. 2 struck witness No. 4 two blows on the head with a club, which knocked him down, the wound bleeding; after which prisoners Nos. 3, 6, 8 and others amidst confusion began to beat him (witness No. 4,) and on prisoner No. 7 giving witness No. 5 a blow on the left arm which bled, he (witness No. 5) ran off, and on the remaining prisoners coming to beat him, (witness,) protesting, he (witness,) fled and went to Punchoo Mundul, and told him what had occurred, who bid him go and lodge a complaint at the *pharee* of Fool Koonwur; when he (witness) went the same day, and complained at the *pharee*, on which,

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on the Thursday following, the police mohurir came and inquired into the case.

Witness No. 7.

"This witness deposes to witnesses Nos. 4 and 5 having been assaulted by all the prisoners when witness ran away. Witness adds, that he afterwards saw witness No. 4 in the yard of one Doolal unable to speak, and that his entire body was covered with blood, when he went and informed at the zemindaree *cutcherry* and then returned to his home.

Witness No. 8.

"This witness confirms having seen, at four or five yards off, the assault committed on witness No. 4 by prisoner No. 2, implicating, besides, prisoners Nos. 1, 3, 7, 8 and 9, as having come armed with clubs to the scene of tumult, exclaiming 'beat, beat;' the assailants numbering from thirty to forty men.

Witnesses Nos. 9, 10, 11, 12 and 14.

"These witnesses implicated all the prisoners as having been present armed with clubs at the affray, particularizing prisoners Nos. 2 and 7 as having assaulted the witnesses Nos. 4 and 5 on the part of the prosecution.

Witness No 20.

"Witness No. 20, (who lives near to prisoner No. 1) deposes to having seen, on a Tuesday, at 3 P. M., about 3rd Aghun, prisoners Nos. 5 and 6 carrying out of the room of Balah Mahomed, the door of which faced the south, the corpse of Arz Mahomed, and after placing it in the outer yard, running back into the house of prisoner No. 1, when witness went into the house of prisoner No. 1, and said to his wife, how is it that having seen to-day Arz Mahomed alive, he is now a corpse, and that his body has been thrown outside? She answered that Punchoo Mundul's people had killed him, after which she detained her (witness) saying 'stay here, go nowhere, I will give you to eat,' whence witness staid here.

Mofussil confession to privity to murder of prisoners Nos. 1, 2, 3 and 5.

"The prisoners Nos. 1, 2, 3 and 5 appear severally to have made of their own free-will a confession of privity to the murder of Arz Mahomed.

Defence.

"The prisoner Balah Mahomed denies the charges contained in the first and third counts of the calendar, and his imputed Mofussil confession, alleging that certain persons (named by him) on the part of Punchoo Mundul, (who had continually oppressed him, in respect to which Arz Mahomed on his part had complained in the Mofussil and Sudder,) had killed Arz Mahomed, owing to his remonstrance against their having commenced to cut his (prisoner's) *dhan* and bamboos. Prisoner called numerous witnesses in order to establish that the attaching party on the

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part of Punchoo Mundul had killed Arz Mahomed; but entirely failed to elicit the slightest evidence in support of this plea.

"The prisoners Nos. 2, 3, 5 and 6 deny the charges, and their confessions; No. 2 calling evidence, but not in refutation of the charges, and the other three having no witnesses, and prisoners Nos. 7 to 10 alleging they were not present at the affray, which they failed to establish.

Futwa of the law officer.

"The *futwa* of the law officer convicted the prisoners Nos. 1 and 2, on violent presumption, of the 1st count, murder punishable by *deeyut-i-mogulliza*, and prisoners Nos. 3, 5 and 6, of the 2nd count, and prisoner No. 7, of the 3rd count, and Nos. 8 to 10, of so much of the 3rd count as comprised their having alone tumultuously assembled, all punishable by *tazeer*.

Opinion and recommendation of the sessions judge.

"I concur in this finding, and would recommend prisoners Nos. 1, 2, 3, 5 and 6 to be imprisoned for life in transportation, and the rest of the prisoners, *viz.*, Nos. 7 to 10 to five (5) years' imprisonment with labor and irons."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"I cannot concur in the conviction of the prisoners Nos. 1, 2, 3, 5 and 6, (No. 4 is dead) on charges of wilful murder, and being accomplices in the same. Three witnesses, Musst. Patnee, Nuzur Mahomed and Dopuhureeah, before the magistrate and the sessions judge, have sworn to seeing the prisoner No. 1, Balah Mahomed, assisted by others, kill the deceased Arz Mahomed, in the said prisoner's house, on the evening of the 18th November 1851. The statements of the two witnesses Nuzur Mahomed and Dopuhureeah, it is alleged, were taken by the police mohurir on the 25th November, on which an order was passed by the magistrate on the 12th December only. When it was received, or why so much delay occurred before it was seen by the magistrate in a matter of so great importance, is not explained.

"The statement of Musst. Patnee was taken by the mohurir on the 26th November, and *it* was transmitted with his final report on the 23rd December.

"The depositions on the record confirm the statements made by the witnesses in the Mofussil. They are, if true, conclusive evidence of the guilt of the prisoners therein named. But I can place no confidence in them whatever. How did it happen that these witnesses, neighbours of the prisoner Balah Mahomed (No. 1), never divulged any knowledge of what they had seen till the 25th November, to the police mohurir, who reached the spot on the evening of the 19th idem, the murder having occurred the day before? How also did it happen that informa-

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tion of so much importance, as the statements of the three eye-witnesses contained, was not with the greatest speed communicated to the magistrate, and that a period of *eighteen days* was allowed to lapse, before the magistrate on the 12th December passed orders on the report of the 25th November, notwithstanding another report in the case, of the *29th* November, reached that officer on the 4th December? Why were not these witnesses immediately sent in to the magistrate, as soon as their knowledge of the facts to which they have since sworn became known to the police, whereas, so far as the record affords any explanation, notwithstanding the police had been called on in general terms to send in the witnesses in the case on the 4th and 9th December, these three were not forwarded to the magistrate till the 23rd December, nearly a month after they had revealed what they allege they witnessed to the police?

"These are all circumstances, which, in my judgment, deprive the evidence of these witnesses of all weight. But there is yet one other circumstance, which throws additional suspicion upon this evidence. The deceased was an orphan; he had been reared by the prisoner No. 1, Balah Mahomed, as his son, he managed all his, prisoner's, affairs, and upon the occasion out of which this charge has arisen, was sent by the prisoner to remonstrate with the *peada* and the eye-witnesses, who came to attach his crops; yet an attempt is made to establish that the prisoner Balah Mahomed, with the assistance of the others, actually murdered the deceased Arz Mahomed, in his own house, in order to throw the responsibility of the crime on the opposite party. The police have declared the fact proved, and the sessions judge, in concurrence with the law officer, convicts the prisoners Nos. 1 and 2, on violent presumption, of wilful murder, and prisoners Nos. 3, 5 and 6, of being accomplices in the same. Independent of the circumstances under which the evidence of the three eye-witnesses has been discredited, it is incredible that a man who had brought up the deceased as his child to the age of maturity, to whom also he entrusted his affairs, should deliberately conspire with others to murder the son of his adoption, in order to bring the criminality of the deed upon another, and that with so little precaution as to admit of his neighbours detecting him in the very act. There is too in the evidence of these eye-witnesses discrepancy as to the names of the parties actually concerned, on comparison of their several accounts in the Mofussil, before the magistrate, and before the sessions judge, though they all swear to seeing the deceased in the hands of his murderers, who were squeezing his throat between two bamboos; but this will in no way account for the two blows on the head which the mohurir reports in his inquest on the body, were visible. For the above reason, I acquit the prisoners Nos. 1, 2,

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3, 5 and 6, on the first and second counts charged against them. The third count charges *all* the prisoners with tumultuously assembling and wounding Panchkouree and Fool Mahomed. This occurred about 9 A. M., in the morning of the day on which the murder took place at a late hour in the evening.

"The two wounded men and several eye-witnesses have deposed to the identity of the prisoner by whom the assault was committed. I have no doubt that a mutual affray took place, the eye-witnesses were accompanied by Wallee Mahomed, the attaching *peada*, and by the chowkeedars who were slightly wounded. These men were in the discharge of their duty; the opposition therefore of the prisoners was illegal, and they must be held responsible for it, though there cannot be much doubt that the deceased, who was on the part of the principal prisoner No. 1, Balah Mahomed, met his death in conflict with some of the other party on the evening of the 18th November. The police mohurir in his report of the 25th November, applied to the magistrate for instructions as to whether he should take the evidence of certain persons named by Bheydoo, who for the prisoner No. 1, laid a charge of murder against the opposite party. In the order of the 12th December, no notice appears to have been taken of this application, and the case has been tried and disposed of on the prosecution of Wallee Mahomed, supported by the evidence of the eye-witnesses, partisans of Punchoo Mundul, who took out process against Balah Mahomed.

"I have already said that there cannot be much doubt that there was a mutual affray in the evening, and that Arz Mahomed lost his life in consequence; otherwise, how is his death to be accounted for under the circumstances above detailed? Nor can there be much doubt that Panchkouree and Fool Mahomed were wounded in the morning in a similar affair. Wallee Mahomed was accompanied not only by the chowkeedars, but by several others, whose presence on the spot is proved by their being made eye-witnesses, though in all probability they took part in the general assault, and ought perhaps to have been committed as well as the prisoners. But these last must not therefore be held quit of their share of responsibility. Their resistance to the process of attachment brought on the affray which took place in the morning, and though no life was lost on the occasion, two persons were wounded in the discharge of their duty while aiding that process.

"I convict the prisoners Nos. 1, 2, 3, 5, 7, 8 and 9, upon the evidence of Panchkouree, Fool Mahomed, Nathoo and Kenoo, chowkeedars, of wounding the said Panchkouree and Fool Mahomed, and sentence them to five (5) years' imprisonment with irons and labor. The evidence against the prisoners Nos. 6 and 10 is not sufficiently clear for conviction: they are released.

" The magistrate must be called on to state why the report of the 25th November, in which the names of the eye-witnesses Nuzur Mahomed and Dopuhureeah are mentioned, was not laid before him till the 12th December. The delay should have drawn the attention of the magistrate, and the sessions judge should also have noticed the circumstance. Further explanation must be given of the cause of the detention of the eye-witnesses in the Mofussil, for the unusual period of nearly a month. Their depositions were taken before the magistrate on 30th of December, the murder took place on 18th November."

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PRESENT:

J. R. COLVIN, Esq., *Judge.*

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

GOPIA, ALIAS GOPEE MISTREE.

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Capital sentence passed on the prisoner for the murder of his wife, from some cause unknown, by repeated wounds inflicted on her during the night. The prisoner pleaded at the trial that, when he inflicted the wounds, he was out of his mind, but the court saw no solid ground for doubting his perfect sanity at the time of the wounding.

CRIME CHARGED.—1st count, wilful murder of Musst. Ooma; 2nd count, severely wounding Musst. Ooma with a *dâo*, with intent to murder her; 3rd count, culpable homicide of Musst. Ooma.

Committing Officer, Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 31st May 1852.

Remarks by the sessions judge.—" The prisoner, a man of thirty-two years of age, married the deceased, a girl of twelve or thirteen, a year since. He brought her to his home seven months ago, where, at about 2 o'clock A. M. of the 4th of April, the following circumstances took place:—

" The principal witnesses, Nos. 52, 53, 54 and 55, who are relatives of the prisoner and reside in the same homestead, were aroused by screams from the adjoining hut, in which the prisoner and his wife slept. Shibram Mistree, witness No. 52, who is the prisoner's brother, hastened out, and saw the prisoner fling open the door of his hut and run forth. He stopped him, called for assistance, and secured him. On procuring a light, and entering the room the prisoner had fled from, they found the deceased lying insensible and severely wounded. Near her a *dâo* was found stained with blood. The prisoner made a second attempt to escape, but was again brought back, and intimation of what had occurred sent to the thanna.

" When the deceased became sensible she told those around her that her husband had wounded her with the *dâo*, and made a similar statement to the darogah on the fourth day after the

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occurrence. She was sleeping, she said, by her husband's side, when she suddenly found him striking her with the *dâo*. Of what occurred afterwards she was ignorant.

"She was sent into the station, placed in the hospital, and sedulously attended by the civil assistant surgeon. But her wounds were, as that gentleman describes them, so extensive and severe on the head, neck and shoulders, that any one of them was sufficient to cause death, and accordingly she expired on the 12th of May, rather more than a month after their infliction.

"The prisoner made a full confession at the thanna. He stated that he and his wife were in the habit of quarrelling, and words occurring on the night in question, she threatened him with a wooden stool. He struck her on the throat with the *dâo*, and repeated his blows on her head and shoulders until she fell insensible. He then threw the *dâo* aside, and fled from the house, but was stopped and secured by his brother Shibram Mistree, witness No. 52.

"On the arrival of the wounded woman, the magistrate went to the hospital to take her deposition. But she seems to have been so greatly affected at the sight of her husband who accompanied the magistrate, that she could do nothing but weep bitterly, and the magistrate found it impossible to obtain a single word from her. The case is thus deprived of the material light she might have thrown on the exciting cause of the violence to which she fell a victim.

"The prisoner twice confessed before the magistrate; in the first instance while his wife was yet living, and again after her death. On the first occasion he admitted having wounded her in consequence of her threatening to strike him, and on the second merely stated that he had murdered her. Before the sessions court, he pleaded 'not guilty' to each of the three counts of the indictment.

"As may be inferred from the circumstances marking the crime and the hour of its occurrence, there were no eye-witnesses to speak to the fact. But the witnesses, Nos. 52, 53, 54, 55 and 56, who are all near relations of the prisoner, and were sleeping in huts adjoining his in the same homestead, supply such circumstantial evidence, as taken in connexion with the prisoner's confessions at the thanna and before the magistrate, is conclusive that he inflicted the wounds, in consequence of which his wife died. They were aroused by her screams. The brother Shibram Mistree, witness No. 52, was the first to hasten out, but the rest speedily followed him, and found that he had secured the prisoner. They obtained a light, and entering the room found his wife bathed in blood, and covered with wounds, the *dâo* lying by her. The witnesses learnt from the

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deceased, when she became sensible, that her husband, the prisoner, had wounded her; but they declared that she assigned no cause for his violence, and that they were themselves entirely ignorant to what to attribute it. They know of no quarrel between the prisoner and the deceased, who lived together on good terms, neither ever complaining of the other in any respect. Three or four months ago, the prisoner was indisposed for a few days from a complaint, termed বাইউ *(bye)*, and suffered from giddiness and neglected his work; but he shortly recovered his usual health, and resumed his usual pursuits. On this particular day he was perfectly well, and had retired to rest after his day's labor. They stated he was not and never had been *mad;* but suffered once from the complaint I have mentioned, which I imagine means hypochondriasis, and its presence is a disturbed state of mind falling short of insanity, but indicating that the intellects are not for the time in a normal and healthy state.

"It is very doubtful, in my opinion, whether the cause assigned by the prisoner for his violence is the true one; for I consider it improbable that a young girl of twelve or thirteen years of age, who had entered on the duties of a wife only six months before, would have ventured to set her husband, a man in the vigor of life, and thrice her age, at defiance in the manner described by him. His statement at the thanna that they were in *the habit* of quarrelling, is contradicted by his relatives; and I am inclined to believe that something passed on the night in question known only to themselves.

"Adopting, however, the prisoner's own statement at the thanna, the provocation appears so inadequate to give rise to such extreme violence, that his state of mind previous to, and at the time, becomes a point of great importance. The witnesses, whether related to him or not, agree that shortly before the event occurred he suffered from the complaint I have mentioned as termed *bye*. But he appears to have recovered rapidly, and to have been in his usual health on that particular night. He is not described as having been insane at any time, but as affected by giddiness, lassitude, and indisposition to attend to his usual avocations. On the other hand, the civil assistant surgeon, Dr. Williams, answered as follows in reply to questions put by me on this point:—'Before his admission into hospital, I saw 'him on two or three occasions in jail, and on those and subsequent occasions, I did not consider him of sound mind. I 'could not obtain correct answers to any of my questions at any 'period, and at others heard him talking incoherently. The 'extremely brutal manner in which the woman was hacked 'would lead one to consider that he could not have inflicted 'such wounds unless from an attack of insanity, or from some 'clear and evident cause for excessive anger.'

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"The evidence of the witnesses Nos. 44, 46, 60 and 61, who were present when the deposition of the wounded wife was taken at the thanna, brings to light a point which the deposition itself does not show. They state distinctly that she mentioned that her husband had suffered from *bye* shortly before, to which cause alone she could attribute the act. Not one word of this is recorded; and I can only trust that it was not withheld from a desire to strengthen the case against the prisoner. I have brought the subject to the notice of the magistrate.

"The prisoner's defence was very brief, and given with deep dejection; but neither in manner nor matter could I observe unsoundness of mind. He stated that he had wounded his wife while out of his mind.

"The law officer convicts the prisoner on the first count, the wilful murder of Musst. Ooma, on violent presumption, and pronounces him liable to *seasut*, or exemplary punishment at the discretion of the judge.

"I find him guilty on the same count; and the following are my views of the penalty to which he has subjected himself.

"In the case of Government *versus* Raujkishore Dhanook, dated the 20th of February 1851, and which bears in many respects a close resemblance to that under report, it is laid down that the question of sanity or insanity is to be decided by evidence of the prisoner's state of mind when the murder was committed; and, again, that clear proof of defect of reason from disease of the mind is required by the law. I have sought anxiously for sufficient grounds for recommending leniency, and a mitigated punishment in the present instance without avoiding the responsibility which attaches to my office; but I cannot find them. Beyond the brief and single attack of hypochondriasis, from which the prisoner suffered two or three months before he committed the crime, and from which his relations depose that he had entirely recovered, there is nothing to support the view that the prisoner's mind was diseased, and his crime committed while incapable of distinguishing right from wrong. The witnesses, from whose evidence I deduce the painful result that the prisoner was not insane when he wounded his wife in so dreadful a manner, are his immediate relatives, living with him, or at least around him, in the same homestead. It is evident that better testimony than theirs could not be obtained on such a point. Habitual intercourse with the prisoner must have rendered them thoroughly acquainted with his health, character, and habits; while their immediate relationship to him may be fairly considered to dispose them to place in the strongest and most favorable light any and every point tending to exculpate him, or at least to lighten the penalty of his crime. They can say no more than that he was hypochondriacal once and for a short time but

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never mad, and free from even the slighter mental disorder when he committed the crime.

"Should the court, however, be disposed to view the question of his responsibility in a more favorable light than I have done, and consider that some strong mental delusion may have suddenly arisen, which deprived him for the moment of the exercise of his reason, I shall rejoice if, in their wise discretion, a sentence to imprisonment for life, with labor in the district jail, can be passed in lieu of that which, in my unaided judgment, appears to be called for—a sentence of death. I am unable to say that I can perceive even at present actual unsoundness of mind; but the prisoner's manner is spiritless, and that of a broken-hearted man. He has taken scarcely any food since his apprehension, and has fallen away to a mere shadow."

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.)—"It is clear, upon the evidence of all his neighbours, that the prisoner had never shown himself to be of unsound mind, although two or three months before his murder of his wife, (a girl of only twelve or thirteen years of age) he had appeared to labor under a fit of hypochondriacal dejection, from which, however, he recovered, and was quite *sane and well on the day of the murder.* We can find no reasonable or admissible ground to doubt the perfect sanity of the prisoner when he committed the murder, and it was a crime of great and deliberate atrocity, the body having been hacked by a number of wounds. The medical officer's view as to the state of the prisoner's mind when he did the act, rests evidently, in so far as it indicates *any* positive opinion, only on a general or speculative presumption, on which we must form our own judgment, without taking what he states as carrying with it medical authority. We can see no solid ground for allowing a mitigation of the sentence, and must, therefore, agree with the sessions judge in passing a sentence of death, subject of course to what may be ascertained to be the prisoner's state of mind on the receipt of the sentence."

PRESENT:

R. H. MYTTON, Esq., *Judge.*

POLUT SOORYEAH MALAH

versus

RAMCHAND DANDI (No. 1), CHINEEBASH HALDAR MALA (No. 2), RAMCHUNDER MALA (No. 3), NOFOOR MALA (No, 4), UCKOOR MALA (No. 5) AND BRIJO MALA (No. 6).

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Case of RAMCHAND DANDI and others.

Culpable homicide in an altercation between the crews of two boats. Sentence, one year's imprisonment and twenty-five rupees fine, commutable to labor.

CRIME CHARGED.—No. 1, wilful murder of Bungshi Dandi, on the 9th May 1852, corresponding with 28th Bysakh 1259, and Nos. 2 to 6, being accomplices in the wilful murder of Bungshi Dandi.

Committing Officer, Mr. C. T. Buckland, magistrate of Hooghly.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 17th June 1852.

Remarks by the officiating sessions judge.—"Six prisoners are committed, No. 1, being charged with the wilful murder of Bungshi Dandi on the night of the 9th of May, and Nos. 2 to 6, as accomplices.

"The prosecutor, Polut Sooryeah Mala, dwells in the village of Moduffer, zillah Monghyr. He deposes that his boat was anchored on the night of the occurrence at Bhodissor ghaut on the Hooghly river, where he was waiting for hire; that about two *ghurries* of the night he returned from the bazar where he had gone on business, when he found deceased insensible on the banks near the ghaut, in charge of the remaining four dandies of his boat. They told him deceased had been struck on the head with a bamboo, by a man in another boat (which they pointed out then at anchor at a little distance) that he had been taken back to their boat, where he died at 12 o'clock that night. He (prosecutor) had seen no wound, but merely swelling. He proceeded early in the morning to the zemindaree gomashta, who reported the matter at the thanna. The jemadar of the thanna arrived that day at 12 o'clock and arrested the prisoners in their boat, which they had anchored at a little distance from that of the prosecutor. He states, that, on his arrival from the bazar in the evening, he observed the bamboo with which the deceased had been struck lying by his side, where the dandies had placed him on the bank. Before the magistrate he stated, that they were carrying him to the *guddee* of Nursingh Paul, a mahajun, close to the ghaut, where he joined them.

"The prisoners all plead 'not guilty.' Four witnesses to the fact are produced, all being the dandies of the prosecutor's boat.

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No. 1 (Rewdo) deposes, that the two boats had come in contact, at two *ghurries* of the night of the occurrence; that the deceased had desired the prisoners to remove their boat; abusive language commenced, and, after a few words, the prisoner (Ramchand) No. 1, struck deceased a blow with the bamboo produced, on which he fell and never spoke after. He deposes indiscriminately that all the other prisoners had cried out *mar! mar!* when the blow was struck. They (witnesses) removed the deceased from the boat to the *guddee* of the mahajun before mentioned. They were there directed to take him back to the boat, which they did; and when they had so gone to the boat, the manjee (prosecutor) joined them. They all remained up with the deceased, who was moaning, but unable to speak, and life became extinct at 12 o'clock in the night. He deposes when the blow was struck, he (witness) seized the bamboo from the hands of the prisoner No. 1, and it so came into their possession. He saw no wounds on the head of the deceased after he had fallen, merely swelling.

"The evidence of the other three witnesses to the fact, corresponds in main particulars as to the blow inflicted by the prisoner No. 1. Evidence of Bhorut, No. 2, differs in stating that the bamboo *had fallen* into their boat from the hands of the prisoner; also that he deposes the prosecutor came back when they were at the *guddee* of the mahajun. He also states, as the others do, that they had tried to open the mouth of the deceased, apparently with some force, but adds that they had given him spirits. All four depose indiscriminately to the other prisoners having cried out *mar! mar! muroonbadee.*

"The evidence of the assistant surgeon of Serampore, Mr. Sheridan, and his report to the magistrate, state, that the fracture of the skull was sufficient to cause death; but he refers to other injuries on the neck and wind-pipe, giving the appearance of a strangulation, and though either injuries, those on the head or neck, were each separately sufficient, the injury to the neck he considers the more immediate and direct cause of death.

"The *futwa* of the law officer is not so distinct as I should wish it to have been. It convicts the prisoner No. 1 of *kutle amud,* but not necessarily liable, under Mahomedan law, to capital punishment, on prosecution of the present prosecutor. It pronounces the other prisoners to have instigated or tempted to the attack, thereby making them accessaries or accomplices in *kutle amud,* the latter being the charge in the calendar.

"With this finding I differ most materially, as I conceive that no murderous intention or design is in any way established by the evidence, so as to warrant a conviction of anything but culpable homicide, and that not of an extremely aggravated character, against the principal prisoner No. 1, but I think it

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'fully established, that the death of the deceased ensued from a blow, inflicted with a heavy stick by the prisoner, by which blow his skull had been fractured. The evidence of the four witnesses, who depose without discrimination as to the several prisoners that they all called out to strike, cannot implicate them as accomplices, and is especially not good evidence, as it is shown that the people of both boats were engaged in a quarrel or altercation when the blow was dealt. One of the prisoners, Brijo Mala, No. 6, whilst he pleads 'not guilty' before the sessions, at the thanna and before the magistrate, states, that he used the word *mar* when the quarrel was going on. I do not think this admission, under all the circumstances, sufficient to convict him, and I would therefore acquit all the prisoners committed as accomplices, and sentence the prisoner Ramchand, No. 1, as being guilty of culpable homicide, to imprisonment for five (5) years, with labor and without irons.

"In his reply at the thanna and before the magistrate, he admits inflicting a blow, but with a light stick, a split bamboo; at the thanna he said that on receiving it, the deceased had whirled round and fell; before the magistrate this is omitted, and he merely repeats that deceased fell on the deck, and that he supposes the force of the fall caused his death; that the bamboo he had used fell into the water.

"These admissions certainly do not amount to a confession of the crime charged, though it may have been proper to record them in that form. It will be perceived that there was no attempt at escape. The prisoners removed their boat, subsequent to the quarrel, to a little distance at the ghaut, and there remained at anchor until arrested; and I believe the principal, when he states that it was only then he knew of the death of the deceased.

"The evidence sent in by the police to the magistrate appears to me incomplete; for it would certainly have been satisfactory to have had that of some of the by-standers, and the people at the *guddee*, where deceased was, as related, carried there in a dying state. The conduct of the darogah in not seeking such evidence, seems to me a subject for notice by the magistrate. He also forwarded the prisoners as being the whole crew of the boat on which they were, and alone present at the quarrel, but it is shown, in the proceedings before the sessions, and before the magistrate, that there was another individual on board, whom the darogah never forwarded or alluded to, though he had been taken up, and whose evidence, at all events, if there were grounds to exempt him from the condition of the other prisoners sent as accomplices, merely from being, like him, in the boat, would have been satisfactory."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The officiating sessions judge has in my opinion taken a right view of this case.

"In an altercation between the crews of two boats, prisoner Ramchand took up a stick and struck the deceased who fell. In his confessions he pleads that the first blow was struck by deceased. It is doubtful whether the blow or the fall occasioned death, but this is immaterial; it was undoubtedly caused by the prisoner's act. The offence is culpable homicide, but of very light dye, and a sentence of imprisonment for one (1) year, with a fine of rupees 25, commutable, on non-payment within a fortnight, to labor, is sufficient punishment. A warrant will issue accordingly.

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"The proof of instigation against the other prisoners is not very trustworthy, and the admission of the prisoner Brijo, that he cried *mar!* is accompanied by a statement, that in doing so he only followed the example of the opposite party. I see no sufficient reason to differ with the sessions judge in the acquittal of the other prisoners."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

RADHARAM DASS.

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The prisoner was acquitted of perjury, both from doubts of intentional falsehood on his part, and because his evidence should not, under the circumstances, have been taken on oath.

CRIME CHARGED.—Perjury, in having, on the 25th March 1850, corresponding with 13th Cheyt 1256 B. S., deposed, under a solemn declaration taken instead of an oath, before the principal sudder ameen of Tipperah, that there had been no registry of a deed of lease, or *ijara pottah,* on the date on which a *tumussook,* between Hurripersaud, creditor, and Mahomed Wasuluddin, debtor, was registered in his presence, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer, Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 4th June 1851.

Remarks by the sessions judge.—"The prisoner is charged with perjury under the following circumstances:—In 1849, Omedah Debea, widow of Hurripersaud Parreh, deceased, brought a civil action against Mahomed Wasuluddin for Company's rupees 2,730, being principal and interest of a bond executed in her late husband's favor. Mahomed Wasuluddin filed an answer, stating, among other points immaterial to the case under report, that the deceased Hurripersaud had, with the view of securing illegal interest, taken a lease of some landed property belonging to Wasuluddin in the name of his servant and country-

1852. man Lall Mohun Sookul, and that the bond and lease were executed on one and the same day, and simultaneously registered on the 2nd February 1847.

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"The prisoner was one of three witnesses cited to prove the bond, and in the course of his cross-examination, on the 25th of March 1850, was asked whether a farming lease had not been registered on the same day as the bond. He replied in the negative.

"The case was ultimately decreed on an *ex parte* investigation; for although the defendant Mahomed Wasuluddin entered appearance and filed an answer, he was considered to have forfeited his right to defend the suit by having insufficiently explained laches.

"Strange however to say, the question, his answer to which has involved the prisoner in this charge of perjury, was put to him in the course of a cross-examination by the defendant's vakeels, the defendant himself being out of court.

"The defendant Wasuluddin appealed, and the case was remanded that his answer might be considered and his proofs received. Among the latter was a copy of the lease; and the principal sudder ameen, finding the prisoner's name affixed to it as one of the attesting witnesses, was struck with the contradiction it afforded to his evidence, and addressed a *roobukaree* to the joint magistrate of Noacolly on the 21st July 1851, requesting that the prisoner might be apprehended and sent in as having committed perjury.

"This was done; when the principal sudder ameen, instead of taking his defence, which was clearly the course to follow, examined him on the 28th of August 1851, a second time, on solemn affirmation. The prisoner, in explanation of his previous evidence, stated that he suffered from deafness, and had answered the question regarding the lease incorrectly and contrarily to fact, because he had not heard it distinctly. On the 16th of September following, he was a third time examined on solemn affirmation, and his defence being at last taken on the 28th of February 1852, he was committed to the magistrate, and by that officer sent for trial before the sessions court. He pleaded 'not guilty.'

"The evidence consists of one witness to the prisoner's original deposition on the 25th of March 1850; of two witnesses to his admission before the principal suddar ameen that that deposition was on the point in question false; of three witnesses who were present when his second examination was taken on the 28th of August 1851, on solemn affirmation; and of the mohurir who registered the bond and lease.

"The prisoner's defence was that he labored under sickness and deafness when his deposition was taken in March 1850, and had not heard or understood the question put to him.

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"The Mahomedan law officer found the prisoner guilty and declared him liable to *tazeer*.

"In this finding I do not concur, for the following reasons: To constitute the crime of perjury it is essential the accused party should be proved to have wilfully and intentionally misrepresented a fact material to the case in which his evidence is given. The prisoner is of the lowest class, a servant at the time when his first examination was taken, and now a tiller of the soil. The bearing of the lease on the bond, and the effect of proof of the registration of the first on the same day with the second, would have in impairing the plaintiff's chance of obtaining a decree, must have been unknown to him unless expressly tutored on the point. This I do not consider probable; for the ground adopted by the plaintiff, and, on the occasion of the second trial, sanctioned by the judgment of the principal sudder ameen, was that the lease was a *bonâ fide* and not a *benamee* transaction, and that no connexion of the kind asserted had been shown to exist between Hurripersaud Parreh and Lall Mohun Sookul.

"The prisoner cannot write, and when he witnessed, in February 1847, the bond and lease, he merely touched the pen. It is perfectly credible that when, three years afterwards, he gave his deposition as to the registration of the bond, he may have forgotten that a second deed was registered at the same time, or, as he states, not have heard or understood the question put to him on the subject. My final reason for considering that the prisoner is entitled to an acquittal is the course pursued after his apprehension for forgery. To take his evidence, not merely a second time but a third, on solemn affirmation, in place of telling him with what he was charged, and desiring him to state what he could in his defence, appears to me to have been a most objectionable and illegal proceeding."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"This was clearly not a case for commitment. The prisoner pleads deafness and that he did not understand the questions put to him. This is highly probable; at all events the ignorance of such a man as to the bearing and effect of the simultaneous registration of the lease with the bond in the civil action may fairly be concluded.

"But the course adopted by the principal sudder ameen, of twice examining the prisoner on oath, after he had called for his apprehension by the authorities at Noacolly, by whom he was sent in as a prisoner on a charge of perjury, is most irregular and objectionable. I entirely concur with the sessions judge in the prisoner's acquittal. Depositions taken under the above circumstances should not have been brought forward as evidence against the prisoner."

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

NOBIN MULLICK (No. 12), GORACHAND MULLICK (No. 13), RAMPERSHAD MULLICK (No. 14), BYKANT MULLICK (No. 15) AND KRISTO MOHUN MULLICK (No. 16).

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Case of NOBIN MULLICK and others.

Conviction of accompliceship in murder.

CRIME CHARGED.—1st count, Nos. 12 to 16, wilful murder of Joodhisteer Mullick Chungo; and 2nd count, Nos. 13 to 16, accomplices in the above wilful murder of Joodhisteer Mullick Chungo.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. E. Bentall, additional sessions judge of East Burdwan, on the 2nd June 1852.

Remarks by the additional sessions judge.—"The prisoners in this case and the witnesses, from Nos. 1 to 7, are low caste men. They are all more or less connected with each other, and live in the village of Alimpore. About 12 o'clock on the 17th of April, there was a dispute between some of the prisoners and Looidhur, witness No. 1, the brother of Joodhisteer, who was not at that time at home, about the possession of a *sujna* tree. When Joodhisteer came home at night, he renewed the dispute and abused the prisoners, who set on him and pulled him from his own premises to the compound of his neighbour Rampershad, and so ill-used him that he died on the spot.

"The deceased man has three brothers, and at least two of them were present; besides which many witnesses who are connected with them were present, and there is reason to suppose that they did not remain passive lookers-on. One of them, No. 3, is a stout young man, and a head taller than any of the prisoners. The witnesses state that Nobin wounded Joodhisteer with a sword on the head; and the medical officer states that he had a wound (apparently a sword-cut) three inches long on his head; but the skull was not broken nor indented with the sword. The vessels of the brain and its membranes were, however, enormously distended with blood, and he took it for granted that death was occasioned by the state of the brain which was the effect of the blow. The witnesses, however, state that Joodhisteer was stamped on until his bowel protruded from his anus, and that he died on the spot; and if so it is very possible that his death was occasioned by some rupture in the trunk of his body; but that cannot be determined as his body was not

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opened. The prisoner Nobin, however, must have the benefit of the doubt and cannot be found guilty of having killed Joodhisteer with his sword. I am myself doubtful whether a sword was used. If a sword were fetched by Nobin, a single slight cut is not likely to have been inflicted; and a sword-cut which would have done so much injury to the brain must have occasioned some mark on the skull. It was not generally known that Nobin had a sword, and none was found and produced on the trial. The witnesses saw a wound which looked like a sword-cut, and said that a sword was used; and the medical officer certainly did not take much trouble about the *post mortem* examination. The witnesses Nos. 1, 2, 3 and 4 state that the prisoners, from Nos. 12 to 16, were engaged in maltreating the deceased man; and other witnesses support the evidence against some of the prisoners; but while a doubt exists whether they were parties engaged in the offence, I cannot trust their evidence respecting particular acts of their opponents. The chowkeedar who reported the crime to the darogah on the day after it had occurred said that all the prisoners were engaged in it, except that the name of Gobra is mentioned instead of Gorachand. His name is, however, written in the report of the gomashta which the chowkeedar carried to the darogah; and I think that the evidence of the witnesses may be trusted, as it relates to the presence of the prisoners, and as it is borne out by the record. I believe that Joodhisteer abused his opponents for having injured a *sujna* tree, which he considered belonged to him, and that he was killed in a riotous attack which the prisoners were accomplices in making on him, and which may have grown into an affray; but it is doubtful what was the injury which was the immediate cause of his death.

"The magistrate has himself taken notice of the dilatory manner in which the case was investigated, and of the false date on which some of the prisoners are said to have been apprehended. I propose that the prisoners be sentenced each to five (5) years' imprisonment with labor; for although the elder ones may not have been so active as the younger prisoners, yet on trial the elder ones, *viz.*, Nos. 14 to 16, and particularly Rampershad, No. 14, appeared to have influence over the others."

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"There is clear proof that the prisoners all took part in the assault on the deceased. It is difficult, however, to be satisfied what act each was guilty of; the cause too of death is not so fully established as could be wished. The medical officer ascribes death to a blow on the head, and extravasation of blood on the brain produced by that blow, which no doubt was inflicted by prisoner No. 12, Nobin. Before the magistrate, the surgeon deposed he observed no other injury on the person of

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the deceased. In the sessions court he stated, that if the entrails had protruded as alleged, his attention would have been called to it. In the inquest on the body the fact is distinctly stated and is proved by the evidence of several persons, who have sworn that they saw the prisoners jumping and stamping on the deceased. Such violence might probably have produced the extravasation on the brain. The wound on the head, the medical officer has stated, would not have occasioned immediate death; the man would have lived several hours after receiving the injury, but it is in evidence that he died immediately.

"All the prisoners were aiding and taking part in the assault on the deceased, which resulted in his immediate death. I convict them of being accomplices in the murder, and sentence them to fourteen (14) years' imprisonment with labor and irons."

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

SRI HURI SHAM (No. 5), KHOSAL DOME (No. 8, APPELLANT), NOBIN KOTAL (No. 10), BONOMALI KOTAL (No. 11), KENARAM PALIT (No. 12) AND CHURN DOME (No. 14).

1852. June 23. Case of KHOSAL DOME (appellant) and others.

Sentence of fourteen years' imprisonment in banishment for dacoity, confirmed on appeal.

CRIME CHARGED.—1st count, dacoity attended with wounding; and 2nd count, Nos. 10 to 14, knowingly having in their possession plundered property acquired by the above dacoity attended with wounding, Nos. 10 and 11 being police chowkeedars at the time of the occurrence.

CRIME ESTABLISHED.—Nos. 5, 8 and 10, dacoity attended with wounding, and Nos. 11, 12 and 14, receiving and knowingly having in their possession plundered property acquired by dacoity attended with wounding.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J. H. Patton, sessions judge of East Burdwan, on the 19th April 1852.

Remarks by the sessions judge.—"This dacoity was perpetrated in the house of one of the witnesses for the prosecution, Ramjadhub Mookerjea, and attended with severe wounding, the witness Guru Dass Hari, a chowkeedar, having lost the use of his left hand from a sword-cut. The dacoits were not disturbed until they had accomplished the work of plunder, when leaving the premises, they retreated before the village party, who had assembled to confront and pursue them. After going a short

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distance they halted and gave the villagers battle, when blows and sword-cuts were exchanged. The prisoner No. 5 and others (released as per Statement No. 8 for the present month,) were identified during the conflict by the light of a torch, which Ramjadhub had brought away from the premises and was carrying, but effected their escape. In a tank adjoining the house of the prisoner No. 8 were found certain articles of the plundered property, and on the person of the prisoner No. 12, a bag containing silver ornaments, some complete, some broken. The bag was concealed in a secret part of the prisoner's person, and fell to the ground on his suddenly getting up. A gold *madli*, or neck beads, was pointed out by the prisoner No. 14, to a police burkundauz, concealed under some brush-wood. The act was voluntary and was preceded by an admission of crime. The evidence against the prisoners is clear and conclusive. The prisoner No. 5 was recognized during the encounter, confessed in the Mofussil, and when apprehended exhibited a fresh wound on the wrist, for which he was unable satisfactorily to account, but which, according to that person's deposition, was dealt him by the witness Gudai Hari Chowkeedar in the fight. The prisoners Nos. 8, 10 and 11 confessed the crime both before the police and the deputy magistrate, and the prisoners Nos. 12 and 14 in the Mofussil. The prisoners all plead 'not guilty' before this court. Their general defence is an *alibi*, with exception to the prisoner No. 12, who called witnesses to prove that the articles found on his person were conveyed thither by the police and deposited in his clothes; that those found in his house were his own property, and that the scratch apparent on his back, was caused by his coming in contact with a pointed bamboo protruding from the thatch of his house. The other prisoners also claim such articles as were discovered in their houses; and the prisoner No. 14 charges the police with producing the *madli* alleged to have been indicated by him. Seventeen witnesses were examined for the defence, but their testimony was in no way calculated to invaildate the strong evidence found and recorded against the prisoners, the *alibis* and other details of plea attempted to be established being vague and indefinite. I convict the prisoners of the charges set forth in column 10, and sentence them according to the extent of their respective criminality. The prisoner No. 5 having been convicted in the foregoing trial also, I pass on him the consolidated sentence sanctioned under the provisions of Regulation XV. of 1814, which I think in his case a sufficiently heavy punishment, as he is quite a youth and has been probably led away by bad example rather than evil propensity. The prisoners Nos. 10 and 11 are village chowkeedars and have consequently incurred an enhanced penalty."

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Sentence passed by the lower court.—No. 5, fourteen (14) years' imprisonment, and in lieu of stripes a further period of two (2) years, total, sixteen (16) years' imprisonment, with hard labor in irons, in banishment, being a consolidated sentence for two offences; No. 10, fourteen (14) years' imprisonment, and in lieu of stripes a further period of two (2) years, total, sixteen (16) years' imprisonment, with hard labor in irons, in banishment; No. 8, fourteen (14) years' imprisonment, with hard labor in irons in banishment; No. 11, seven (7) years' imprisonment, and in lieu of stripes a further period of two (2) years, total, nine (9) years' imprisonment, with hard labor in irons, in the district jail, and Nos. 12 and 14 each, seven (7) years' imprisonment, with hard labor in irons, in the district jail.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"This case has already been before the court on the appeal of Sri Huri Sham.

"The prisoner Khosal Dome now appeals, pleading that he was not identified by eye-witnesses at the time of the dacoity, and that his confession to the darogah was extorted by duress and confinement for four days, that officer having misrepresented the date of his apprehension.

"The first plea is futile, the last was not urged in defence at the trial; and the prisoner now does not indicate in what way the fact is, or might have been established, moreover, he has confessed his guilt to the magistrate. The appeal is utterly groundless, and is rejected."

PRESENT:

J. R. COLVIN, Esq., *Judge.*

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

BAHADOOR SOONDEE.

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Case of BAHADOOR SOONDEE.

Capital sentence passed on a party, convicted of the murder of his wife, and two sons, under the pulse of jealous excitement, or desire of revenge.

CRIME CHARGED.—Wilful murder of Musst. Bootnee and Mussoodun and Mooswa.

Committing Officer, Mr. H. Doveton, deputy magistrate with magisterial powers, Mudhypoora, Purneah.

Tried before Mr. F. Lowth, sessions judge of Purneah, on the 15th May 1852.

Remarks by the sessions judge.—"The prisoner pleaded 'not guilty' to the charge preferred against him.

"The following circumstances connected with this case, are gleaned from the depositions of the witnesses, and the confessions of the prisoner before the police and deputy magistrate, Mr. Doveton.

"It appears that for some reason or other, not very clear, the prisoner resolved, on the morning of the occurrence, to quit the village Bhowaneepore and to go to Bhaugulpore, ostensibly to seek his livelihood. From the evidence of the witnesses, however, it was impossible to discover any cause for this sudden resolution, whilst the reasons assigned by the prisoner in his confessions before the lower courts, namely, infidelity of his wife, and in his defence before this court, namely, a quarrel with a another resident respecting some jewels, were not supported by any evidence. It is clear, however, that in the forenoon of the day in question, the prisoner quitted his home with his wife Bootnee and two sons, Mooswa and Mussoodun, lads of ten and seven years of age, and had proceeded only about a quarter of a *coss*, when on coming to a place overgrown with grass and *jhow* jungle, he attacked and most severely wounded all three with a *koolharee*, or axe: he then returned to the village and informed the chowkeedar, Feringhee, witness No. 1, of what he had done, and demanded to be taken into custody. From the evidence of five chowkeedars, Feringhee, Sewuk, Saheb, Boukoo and Suntoo, witnesses Nos. 1, 2, 3, 11 and 12, there can be no doubt but that, after the commission of the deed, the prisoner did return to the village, and of his own accord enter into a detail of the circumstances connected with his assault on his family, and that he gave himself up, and then accompanying the police pointed out the place where the bodies were discovered. The two lads, Mooswa and

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Mussoodun, were found to have been wounded on the head in a most frightful manner, and were removed to the village in a lifeless state; whilst their mother, Bootnee, though also most seriously wounded, was still living, but insensible. It is also quite clear that the weapon, (blade, iron, one inch thick, six and a half inches long, two and a three quarter inches broad; handle, two feet, one and a half inch long, axe stained with blood, and weighing one seer and two chittacks,) produced in court, was found on the spot, and acknowledged by the prisoner as his own, and to have been used by him on the occasion.

" Before the police, on the 25th, and deputy magistrate, on the 29th March, the prisoner recorded confessions nearly word for word alike, and to the effect that his wife had been very intimate with Boukoo Sooree, witness No. 13, and having observed her frequently to visit his house, he asked her the cause, to which she replied that having entrusted some gold ear ornaments to him to keep, she went to recover them, but he refused to restore them. The prisoner then declared his intention of demanding their return, and in the event of the party not complying with his request, that he would require him to take an oath on the subject as to their non-receipt. He accordingly spoke to the above party on the point, but failed to obtain the ornaments: and as he would not take the required oath a *punchayet*, composed of several neighbours named, was assembled early in the morning at the house of Bhyroo Sooree, where the prisoner, with his wife also, at the invitation of Khooskee Sooree, witness No. 14, attended to consider the matter. Boukoo Sooree, however, denied all knowledge of the ornaments. The prisoner then states in his confession that he returned home with his wife, and about two *ghurries* of the day, *i. e*, between 8 or 9 A. M., took her and his two sons, Mooswa and Mussoodun, a few brass utensils, and an axe, and started for Bhaugulpore; that on reaching a spot about a quarter of a *coss* to the south of the village, he addressed his wife, asked her how far he should carry about with him a *phutta dhol, alias* an unfaithful wife, and on her remarking that if she was such, he had better make her over to Boukoo Sooree, he became very angry and incensed and threatened to strike her. His wife, however, proposed that he should first kill the two lads, and then dispatch her. He accordingly first attacked his youngest son Mussoodun, and felled him to the ground with some five blows on the head with the axe; and then knocked his wife down with two or three blows on the head and cheek. His second son Mooswa appears to have run off from fear; but this most unnatural father pursued him, and also struck him to the earth. The prisoner then went to the village, leaving the brass utensils and axe near the scene of this most brutal and cold-blooded outrage, and wholesale slaugh-

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ter, and gave himself up. He declared that he first went to Boukoo Sooree and informed him and Feringhee Chowkeedar of the occurrence, and then pointed out where the bodies lay; that his son Mussoodun was quite dead, and his wife and Mooswa only just breathed. He also declared no one to have seen him commit the deed, and that he had no witnesses to prove the deposit of the ornaments with Boukoo Sooree. Both these confessions were read over before the attesting witnesses Nos. 7 and 8, and by them declared to have been voluntarily made, no improper influence or interference being exercised towards the prisoner.

"Boukoo Sooree, witness No. 13, denied both the existence of any intimacy between himself and the wife of the prisoner, and the deposit with him of any gold ornaments; and declared no *punchayet* to have been held at Bhyroo Sooree's house as urged by the prisoner. He further stated that about midday of the day in question, the prisoner came to his house and asked for water, which he gave, and that he then said he had killed his wife and two sons; that the witness became alarmed, and went immediately in search of Feringhee Chowkeedar, but failed to find him; and on his return home saw the prisoner in custody of the said chowkeedar and four others.

"Khooskee Sooree, witness No. 14, also denied the assemblage of the *punchayet*, and his having invited the prisoner and his wife to Bhyroo Sooree's house.

"Three papers, dated the 25th March, intended as *sooruthals*, and descriptive of the wounds on the several parties, were duly read over; but in consequence of their not bearing the signatures* of any witnesses, they could not properly be attested. Birjoo Fotedar, witness No. 7, however, deposed to their having been drawn up, and the inquest held before him, and testified to their correctness. The first of these showed Musst. Bootnee to have had five wounds, one on the left cheek, five fingers in length, two in breadth and two in depth; a second on the head, one finger long and one finger broad, and a barleycorn deep; a third on the back of the head, four fingers long, one finger broad, and a barleycorn in depth; a fourth over the left ear, four fingers long, one finger broad, and a barleycorn deep; and a fifth over the right eye, one finger in length and a barleycorn broad and deep.

"The second paper declared Mooswa to have been wounded in four places—first over the left eye, one finger in length, one in breadth, and a barleycorn deep; second over the right eye, eight fingers long, two fingers broad, and one deep; third under the right ear upwards to the head, eight fingers long, two

* This irregularity has been duly brought to the notice of the deputy magistrate.

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fingers broad, and two fingers deep; and the fourth on the right cheek, one finger long, one finger broad, and one and a half finger deep,

"The third paper represented the lad Mussoodun to have received five wounds,—first, on the head, five fingers long, one finger broad and one finger deep; second, over the right ear, four fingers long, two fingers broad and one finger deep; third, under the right ear, but more like a fracture, a barleycorn in depth; fourth, near the crown of the head, one finger long, one finger broad, and a barleycorn in depth; and the fifth on the head, one finger long, broad, and deep.

"Two other witnesses, Khemun Sooree, No. 4, and Granee Fotedar, No. 5, also deposed to their having been present at the time of the inquest, and seeing several severe wounds on the head and faces of the deceased.

"In consequence of the scene of this occurrence being nearer to Purneah than the deputy magistrate's court, the corpses of the two lads were forwarded to this station for examination, together with Musst. Bootnee, who was then living, but in a very dangerous state. For some days after her admission into hospital she appears, from Dr. Beale's report on the 14th April, to have been gradually recovering, as on that date he considered her out of danger. On the 18th, however, she died, having been seized with an attack of inflammation of the lungs. Dr. Beale, in his deposition before this court respecting the nature and extent of the wounds of the deceased, stated Mooswa to have received two deep wounds on the right side of the head, dividing the skull and penetrating the brain deeply, and two others of a less severe nature on the right cheek and over the left eye; Mussoodun also appeared to have had two severe wounds on the head, dividing the skull and penetrating the brain, one being situated above the right ear, and the other on the crown of the head. Dr. Beale also examined the wounds of Musst. Bootnee, and found her to have received a very severe wound on the left cheek, dividing the integuments, and fracturing the lower jawbone, as well as several slight superficial wounds about the head and face. He was also of opinion that the deaths of Mooswa and Mussoodun were caused by the above wounds; that death must have ensued almost immediately after their infliction; and that the axe produced in court was a weapon likely to cause such wounds. With respect to the death of Musst. Bootnee, Dr. Beale deposed as follows:—'I am of opinion that her death 'was indirectly attributable to the wounds, inflicted for the 'following reasons:—Up to the 14th April last, the case appeared 'to be progressing favourably, the external wound having nearly 'healed: and on then being required to report on the state of 'the woman, I wrote the letter above referred to of that date.

'The next day, however, she was attacked with inflammation of 'the lungs, which proved fatal to her on the 18th of April. 'On making an examination of the lung after death, it was found 'that the woman had formerly suffered from disease of the lungs, 'there being extensive adhesion of the lungs to the side, and the 'lung being studded with tubercles, to the suppuration of which 'her death was attributable. This diseased action, I am of 'opinion, was induced by the debility consequent on the wound; 'and I therefore attribute her death indirectly to the wound. 'There was no appearance of reunion of the ends of the fractured 'bone, a proof of the absence of healthy action.'

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"Though, as remarked above, the *sooruthals* drawn up by the police were not so fully attested as could have been desired, yet I have no reason to doubt their correctness, as the deposition of Dr. Beale fully establishes it in all important points.

"The prisoner in this case was originally committed for trial on the 17th of April, on the prosecution of Goolwa Sooree, the eldest son of the prisoner, and charged with the murder of all the three deceased. A supplementary proceeding of the 27th April was also filed with the record, to the effect that the commitment on the former date for the three murders being incorrect, inasmuch as Musst. Bootnee had not died till the 18th, it was therefore necessary to amend it by the proceeding in question. Considering this irregular, and that the case should not have been committed to the sessions until Musst. Bootnee had been pronounced in all respects out of danger, and as the prisoner had been erroneously committed on the 17th for the murder of Musst. Bootnee who was then alive, and the prosecutor Goolwa Sooree was a mere youth, I returned the record to the deputy magistrate with instructions to include the prisoner's son, Goolwa Sooree, among the witnesses, making the Government prosecutor, and to re-commit the prisoner on the charge now noted in the calendar, which was accordingly done, the *roobukaree* of commitment bearing the same date as the supplementary proceeding above noted.

"On the boy Goolwa Sooree being called on to give his deposition, he appeared totally ignorant of the nature of an oath, and as his statement only shows him to have seen the bodies of his two brothers and his mother in a wounded state after his return home on the evening of the occurrence, it is unnecessary to make any particular remarks on it. It, however, appears that on the following morning his mother was so far recovered as to be able to tell him, though with difficulty, that his father had desired her to accompany him to Bhaugulpore, and when on the road had threatened to kill her; that she had remonstrated, urging that she had committed no fault; and that he then killed his youngest brother, then wounded her, and finally killed

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"Mooswa. The lad also denied all knowledge of his mother having deposited gold ornaments with Boukoo Sooree, and that his mother frequently visited that person's house.

"On the 25th of March, the day after the occurrence, Musst. Bootnee deposed before the police to the following effect:—That on the previous day, about two *ghurries* after morning, her husband told her and her two sons to prepare to accompany him where he wished to go; that they did so accordingly, taking with them a *lotah*, two *thalees*, and a *kooralee;* that after proceeding about a quarter of a *coss*, her husband, from some cause or other, not known, first struck the lad Mussoodun, seven years old, a blow on the head with the axe, then struck her a blow on the head and two others, one on each cheek, and then attacked Mooswa, ten years old, and gave him a blow on the head; that both the boys had died, and she was nearly killed; that no one else was present or witnessed the outrage.

"On the 27th March the law officer attended on her in hospital, and took her deposition on solemn declaration. She then stated that her husband had struck her with an axe; that he would not remain in the village but would go to Bhaugulpore; that her husband had carried the axe, and on her asking him what he intended doing with it, he replied, 'what will you do'; that he then struck her son, then her, and lastly her other son (no names specified;) that she became insensible, and afterwards people came; that the *lotah* and *thalees* were taken to the police *pharee;* that her husband was an ignorant man, and there was no certainty in his behaviour, and she had run away to another village in consequence; that he had called her back and taken her to the plain and murdered her; that at the time of striking her, he was angry, but previously his disposition had been good; that both her sons had gone with her, and therefore he had killed them; that she had never any intimacy with any one; and that the place where her husband struck her was about half a *coss* from the village. This deposition was signed by moulvee Yar Alee, the law officer of the court; and on the 30th March the officiating magistrate appended the following remark in English,—'oath explained, this 30th March 1852, the 'deponent being in possession of her senses, but only able to 'speak very little.'

"Before this court the prisoner in defence entered into a very lengthened statement to show that the cause of his quitting his village was in consequence of his inability to recover the gold ornaments, which he persisted in declaring his wife had confided to the safe custody of Boukoo Sooree; that he had been forced to attend a *punchayet* held at Bhyroo Sooree's house on the subject, and had been abused; and as he had lost both his honor and his gold ornaments he would leave the place; that he then

started with his son Mooswa, who had charge of the *lotah* and two *thalees*, whilst his wife and Mussoodun followed after awhile with the axe; that he took the road to the south, and on the way asked his son Mooswa why he had delayed to join him, and was told that Bhyroo's wife was whispering something to his mother, and that she would follow; that he then took the *lotah* from his son, and retired to the jungle for a necessary purpose, leaving his son seated about two *beegahs* off, where he was shortly after joined by his mother and other brother; that he then saw Boukoo Sooree and Bhyroo's son, Moulee, approach, ask his wife for the axe which she had concealed under her clothes, and inquire for him; and that she told them he had gone a short distance off; that Moulee then struck Mussoodun with the axe, and as Mooswa ran off Boukoo snatched it from Moulee's hand and pursued and killed him, and then returned and wounded his wife also; that they then ran off towards the village, but separated, so that the prisoner pursued Boukoo only, calling out that he and Moulee had murdered his wife and sons, and were running away, and on the way informed Feringhee Chowkeedar of the circumstance, and desired him to give notice at the *pharee*. His story, however, did not appear to have gained much credit from the neighbours, to whom he declared himself to have mentioned the subject; he therefore proceeded to Boukoo's house, where a scuffle ensued, till other neighbours interfered and put a stop to it; when the prisoner seated himself in the court-yard and awaited the return of the chowkeedar. He then accompanied the police burkundauz and the five chowkeedars, and pointed out the bodies. The prisoner also pleaded that his confession before the police had been extorted from him, inasmuch as the first statement made by him, and similar to that now given before this court, had been suppressed by the darogah at the instigation of others named, and another substituted. He also urged that his statement before the deputy magistrate was taken down by the mohurir in a corner of the court, distant from the presiding officer, and fearing further oppression, and being still in pain from the treatment he had experienced at the hands of the police, and intending to defer his defence till his appearance before this court, had desired the mohurir to embody in his statement all that had been recorded at the police. He had, however, no witnesses to support his defence in any one particular, though frequently questioned and requested to name any parties whom he might wish to have examined.

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"The *futwa* of the law officer convicts the prisoner of the murder of his wife and two sons, and declares him liable to punishment by *deeyut*.

"In this finding I concur, but as sentence cannot be passed by this court on such a verdict, I refer the case for the final

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orders of the Nizamut Adawlut. Though there were no eye-witnesses to the fact, yet I consider the guilt of the prisoner to be most fully established,—*first*, by the evidence of the chowkeedars and other neighbours who were present at the time of his declaring himself to be the murderer, and who subsequently visited the spot pointed out by the prisoner, and found the axe, the brass utensils, and the bodies of the two lads, and his wounded wife; *secondly*, by the deposition on oath of Musst. Bootnee before the law officer; and *thirdly*, by his own confessions before the police officers and deputy magistrate. That these two statements should be so very similar, at first did appear to me strange; but I do not think them open to any suspicion for the following reasons:—The witnesses before whom the police mohurir examined the prisoner have deposed most positively to his having been examined *once only*, and that he then made the statement found with the record, dated the 25th March. As it was evening, however, before the papers, &c., could be made up for despatch to the deputy magistrate's court, the prisoner was detained till next morning, when the darogah arrived. The confession appears to have been then perused and signed by him also. This fact has been apparently construed by the prisoner into a suppression of his former statement, and the substitution of a fresh one after the arrival of the darogah; but I can give no credit to such a plea, particularly as the prisoner acknowledges his signature affixed to that confession, and Birjoo Fotedar, witness No. 7, whom the prisoner declares to have been one of two witnesses to the alleged first statement, denies his having recorded any other than that confession which bears his and Anunt Jha's, witness No. 8's, signatures; and the prisoner could adduce no other proof in support of his assertion. Before the deputy magistrate the prisoner is proved by the evidence of two witnesses, Karamut Alee and Mahtab Khan, Nos. 9 and 10, to have made his confession of his own free-will, and in the immediate presence of the deputy magistrate, who was then in court, and questioned the prisoner as to the matter and particulars he was about to confess to, and that his Mofussil statment was not read over to him until the other had been duly recorded. That the one confession was copied from the other, as insinuated by the prisoner, I utterly disbelieved, *first*, because the leading features of the occurrence were such as to be easily retained in the memory, and as only three days had elapsed between the dates of the two statements, the prisoner could have had no difficulty in recollecting what he had stated before, and therefore doubtless gave the same version of the matter; *secondly*, in his confession before the deputy magistrate, there are some slight differences, which would not have appeared had the same been merely copied from the Mofussil statement; *thirdly*, the witnesses to the sudder

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confession deny the truth of the prisoner's assertion, and he has no evidence to adduce in its support; *fourthly*, the prisoner made no complaint to the deputy magistrate as to the alleged misconduct of the police, and *lastly*, the idea of entering upon a full detail of the circumstances of the case before this court, could never have been thought of by the prisoner until after his commitment to the sessions, unless his guilty conscience told him such would inevitably be the result of the inquiry. The similarity of the two confessions is thus to my mind sufficiently accounted for; and I therefore consider the pleas urged on these points in the defence, unworthy of credit. I also discredit the assertion of the prisoner relative to his seeing Bonkoo Sooree and Moulee attack and strike down his wife and two sons, *first*, because by his own showing he was at the time two beegahs off from them and surrounded by high grass and *jhow* jungle, and therefore could not have seen their approach; *secondly*, he admits that he has been deaf for seven years past, and therefore could not have heard their conversation with his wife, and the inquiries made for him; *thirdly*, by his own statement his wife was in such a state, bordering on insensibility, on his emerging from the *jungle* and speaking to her, as with difficulty to be able to articulate, and therefore from his deafness he could not have heard what she said; and *lastly*, if he really did see these people assault his family, what prevented his going to their rescue, and particularly to aid his son Mooswa, who, according to the prisoner's own statement, and the plan of the spot where the occurrence took place, must have run in the very direction where he was seated in the jungle? The court will also observe that the witnesses were examined at considerable length to ascertain whether the prisoner had any reason to be dissatisfied with the conduct of his wife, as well as to discover whether a *punchayet* of the villagers had actually met at Bhyroo Sooree's house on the morning in question; but nothing favorable to the prisoner was elicited: on the contrary his wife appeared to have borne a most irreproachable character, and given her husband no cause for offence, and the witnesses denied all knowledge of the *punchayet*. That a man in possession of his senses should, without any apparent cause, commit such a fearful outrage, seems almost incredible, yet such is the case here. The prisoner appears to have had no cause for dissatisfaction with his family; and, as shown by the evidence, left the village in good fellowship with all his neighbours, for Bhaugulpore, in consequence of his inability to obtain a livelihood; but this is a mere excuse, and I have great doubts of its truth; for if such had been his real intention, he surely would not have left his eldest son behind, nor abandoned his bullock and other little property he had in the house he quitted. I therefore think the prisoner must have had some reason to doubt the fidelity of his wife;

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but to support the supposition there is no evidence; and as all natives are averse to mention whatever they may know on such a subject, the prisoner was unable to adduce any proof on the point; but even had such been attainable, it could not be considered of sufficient weight to justify the commission of so deliberate, wilful, and cold-blooded a crime, as the three-fold murder in question; for whatever may have been his feelings towards his wife, the prisoner had no cause for raising his hand against, and striking down, his two innocent and unoffending sons. Under all the circumstances, therefore, I am of opinion that the prisoner premeditated the destruction of his wife and two children; and for that purpose induced them to leave their home on the plea of going to Bhaugulpore, and took advantage of the first most lonely and jungly spot that offered for the commission of this most diabolical deed. I can therefore discover no just grounds for recommending the prisoner to the mercy of the court; and consequently am of opinion, that he should be sentenced to suffer capital punishment."

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.)—MR. A. J. M. MILLS.—"The *futwa* of the law officer of this court convicts the prisoner, and deems him deserving of *kissas* for the murder of his wife, and of *deeyut* for the murder of his two children, and I can see nothing which can afford a reasonable doubt in favor of the prisoner.

"His defence is unsupported by evidence, and is altogether unworthy of credit. The similarity of his confessions is not, I think, a matter of suspicion; they are clear and consistent, and are duly attested. Further, they are corroborated by the prisoner's voluntary surrender, by his pointing out to the police burkundauz and the villagers the bodies of his wife and children, and the scene and instrument of the murder, and by his avowing himself then and there to be the perpetrator of the deed.

"The prisoner states in his confessions that his wife taunted him to kill his children, and that he was moreover displeased with them, because they were in the habit of eating sweetmeats, and would not tell him where they obtained them. My belief is, that the prisoner, in a fit of furious jealousy, premeditated the murder of his wife and his two unoffending children, and am of opinion that he should be sentenced to suffer death.

"I have not admitted the dying declaration of Musst. Bootnee in evidence, as it has not, as it should have, been authenticated."

MR. J. R. COLVIN.—"I concur in thinking the guilt of the prisoner clearly proved. It is fully shown that he himself pointed out the scene of his murderous attack, where one of his children was then lying dead, and his other son and his wife

prostrate from the wounds which he had inflicted on them, and which subsequently proved mortal. He at that time declared himself the murderer, and his wholly unsupported, and grossly improbable, defence on the trial is evidently merely a desperate attempt to put forward any account of the occurrence, by which there might be a chance of directing suspicion against other parties.

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"His statements, made at the time of his taking the police burkundauz and the village chowkeedars to the spot, supported by the other facts of the case, would, of themselves, require the conviction of the prisoner, independently even of his formally recorded confessions. There is a great similarity, certainly, in the course and terms of these latter confessions; but there are also minute and circumstantial differences, showing that the confession before the deputy magistrate was taken down on the prisoner's own statement, and not copied from any previous paper. Such too is the express testimony of the attesting witnesses, when closely examined on the point by the sessions judge.

"The murders were committed under the impulse of jealous excitement, or desire of revenge. There are no mitigating circumstances in the case, and I must concur in the capital sentence.

"It is to be observed, for the future guidance of the sessions judge, that he ought to have authenticated the declaration of the deceased taken on the 27th March by the law officer, and confirmed before the magistrate on the 30th March, by the evidence of the writer Imam Alee, and then to have placed the document on the record of the trial to have such weight given to it as it might deserve. The magistrate also ought to have formally examined the woman as a witness, when at one time, on or about the 14th April,* she appeared to be recovering."

* See para. 8 of sessions judge's letter.

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

SHEODOYAL MAHTO

versus

JEUT (No. 2) AND ACHUMBIT (No. 6).

1852.

June 23.

Case of JEUT and another.

Sentence of seven years' imprisonment for burglary and theft of property, value 2,077-12-0, confirmed on appeal.

One prisoner acquitted of knowingly having in possession a portion of the stolen property, the fact of possession not being satisfactorily established.

CRIME CHARGED.—No. 2, accomplice in burglary and theft of property to the amount of rupees 2,077-12-0, and No. 6, having in his possession a portion of the above property, knowing the same to have been obtained by burglary and theft.

CRIME ESTABLISHED.—The same as charged.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 31st January 1852.

Remarks by the sessions judge.—"The following is a short statement of the main facts of this case. On 24th November last, the prosecutor (who is a saltpetre merchant) had his godown robbed and a large sum of money and some other articles placed therein carried off; but at that time no trace could be found of the perpetrators. Soon after, however, he heard that the prisoner Jeut (who is grandson to his own brother) had been seen with some other persons going along together on the night of the robbery, whereupon he sent for and taxed him with knowing something about it; and though he at first denied all knowledge of the crime, he in the end acknowledged that he had been engaged in it, and named the prisoners Nos. 3, 4 and 5,* with some other persons as his accomplices. Owing, however, mainly to the mismanagement of the officer who was first engaged in inquiring into the affair, no trace whatever could at that time be found of the stolen property, but another person, who was deputed in his place, succeeded in finding a few of the stolen articles in the house of the prisoner No. 6, though nothing even then was found with any of the other persons implicated, nor has any part of the money been recovered up to this date. Both to the police, and also to the magistrate, the prisoner, Jeut, admitted that he had consented to the robbery, and he appears to have done this partly from a feeling of ill-will to the prosecutor, who he said had beaten him with a shoe. On his trial he denies his guilt, but admits having made these confessions, though he says he was induced to do so by the prosecutor, who wished to bring the charge home to the other prisoners. Achum-

* These prisoners were acquitted by the lower court.

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bit, prisoner No. 6, allows that the things were found in his house, but says that they were placed there against his will by a woman (the wife of another party implicated in the affair), but there is no proof whatever of this: and it is clear that they were found in his possession. The moulvee convicts both the prisoners of the charges preferred against them and holds them liable to *tazeer*, and as I cannot but concur in this finding, I have, under all the facts of the case, sentenced them as noted in the preceding column."

Sentence passed by the lower court.—No. 2, seven (7) years' imprisonment with labor in irons, and No. 6, two (2) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"The prisoners Jeut and Achumbit have appealed from the sentence of the sessions judge. The guilt of the former is fully established by his own confessions, and, although he asserts that they were extorted, the evidence all tends to the contrary conclusion. I see no reason to interfere with his conviction and sentence. The charge of knowingly *having in his possession* stolen property is not satisfactorily established against the other prisoner. The darogah in his report of 4th December, states that when he went to Gopalnugger, the residence of Rajroop and Mangy, two persons implicated in the burglary by Jeut's foujdaree confession, Mukdoom Burkundauz, who was sent to watch Rajroop's house, gave notice that he had discovered some of the stolen property in the residence of a Chumar near Rajroop's house. The darogah went and found a basket of *lotas*, and *thalees*, out of which the prosecutor recognized one *thal* and two *lotas*. Achumbit was the owner of the residence. He said that the property was not his, and that Rajroop's wife had brought it there. To the magistrate and in the sessions court he has adhered to his statement that when the darogah surrounded Mangy's house, Rajroop's wife brought these articles, and threw them down in his residence; that the burkundauz arriving, and asking where the articles came from, he told him. The burkundauz was not, as he ought to have been, examined, but the prisoner's statement is so natural, and has been so consistent throughout, that it is most probably true.

"The witnesses to the finding are neither of them inhabitants of Gopalnugger, and they throw no light whatever on the circumstances of the finding the property by the burkundauz. They do not even state whether the property was within a house or only on the yard outside, but from the discovery of it by the burkundauz, it may be inferred that it was outside, and that the burkundauz came upon the woman just as she threw it down. If the prisoner's house was searched, it was not in the

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presence of inhabitants of the village, as required by Clause 5, Section XVI. Regulation XX. of 1817. The possession by the prisoner and his guilty knowledge cannot fairly be inferred from the evidence on the record. On the contrary he has acted with candour throughout and not like a guilty man. He is entitled to an acquittal and will be released."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

BUNMALEE RAWUT.

1852.

June 24.

Case of BUNMALEE RAWUT.

The circumstances of the case being conclusive as to the prisoner's guilt, the sentence passed upon him was confirmed in appeal.

CRIME CHARGED.—Knowingly receiving property, forming part of a theft of more than rupees 300, belonging to Narain Doss, deceased, on the 19th October 1851.

CRIME ESTABLISHED.—Knowingly receiving property, forming part of a theft of more than rupees 300, belonging to Narain Doss.

Committing Officer, Mr. G. D. Wilkins, officiating magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 8th April 1852.

Remarks by the sessions judge.—"This robbery occurred on the 19th October 1851, at the Telingapoat bazar close to the police *pharee,* about fourteen miles from Cuttack, where Narain Doss, deceased, had halted for the night with three hackery loads of property, which he was removing to Pooree. On the first occurrence of the robbery none of the stolen property was traced, and the suspected parties escaped punishment, and the police having been directed to try and discover the thieves, Huree Singh, witness No. 1, jemadar of the Telingah bazar *pharee,* in whose division Narain Doss resided, having observed that Bunmalee Rawut and Narain Mooleeah were spending more money than their ordinary means permitted of, and that they were likewise in the habit of associating with the persons who were, in the first instance, suspected of having committed the robbery, and other bad characters, he gave information through the darogah to the magistrate, who directed their houses to be searched, and the result was that, in the house of Bunmalee Rawut was found a diamond ring, a *chounree moondee,* and other ornaments, and rupees 115 cash, all of which were buried in the ground; and from the house of Narain Mooleeah rupees 62, which were also buried in the ground.

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Case of BUNMALEE RAWUT.

"Musst. Alee, the concubine of the deceased Narain Doss, who was proceeding with him to Pooree at the time of the robbery, deposed, that the articles found in the house of Bunmalee Rawut were the property of Narain Doss, and witnesses Nos. 6 and 7 likewise deposed to the identity of some of the articles, but as they had only casually seen the things, much reliance could not be placed on their testimony, and I therefore postponed the case, and summoned, through the magistrate, the parties who were said to have pledged the different articles to Narain Doss, and on the 8th April the undermentioned persons identified the various articles, as follows, *viz.*, Digumber Maintee, the *roopa chumpa kullee*, No. 6, and a piece of a broken *karroo*, No. 7; Oodai Dey the *chounree moondee*, No. 5; Musst. Parbutty, the *soonagoona*, No. 4; Gopeenauth Bidyadhur Bukshee, the silver sword mountings, No. 8; and Kishen Chunder Bombur Dewan, the diamond ring, No. 3.

"Bunmalee Rawut pleaded 'not guilty,' and stated that the cash, rupees 115, was his mother's, and that he found the ornaments in the Kanugur *maidan*, where a party of Moguls had been encamped, and he took exception to the evidence of the witnesses to the identification of the said articles, stating that some of them had been tutored by Musst. Alee, the concubine of Narain Doss, and that the description given by the others of the articles pledged by them did not tally with that of those found.

"The *futwa* of the law officer convicted the prisoner Bunmalee Rawut of the crime charged on the evidence of the witnesses, the identification of the ornaments found in his house, and the incredibility of his assertion respecting his having found them in the *maidan*, and for the same reason as well as from the general circumstances attending the case, I consider that there exists violent presumptive proof of his guilt, and I accordingly sentence him to four (4) years' imprisonment, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoner has appealed. He admits that the stolen property was found buried in his house, and this fact, taken with the circumstances of the case, warrants a violent presumption that he had a guilty knowledge of how the property was acquired. I see no reason to interfere with the conviction and sentence."

PRESENT:

SIR ROBERT BARLOW, BART., *Judge.*

CHUNDER MOHUN DUTT

versus

DHEERMONY TATIN (No. 11) AND NITAE RAOT (No. 12).

1852.

June 24.

Case of DHEERMONY TATIN and another.

The prisoners convicted on their own confessions and production of the stolen property.

CRIME CHARGED.—1st count, dacoity attended with wounding in the house of the prosecutor on the night of 29th February 1852, or 18th Phagoon 1258 B. S., from whence property valued at rupees 3,947-10-0 was plundered; 2nd count, aiding and abetting in the above-mentioned crime; 3rd count, knowingly receiving property acquired by committing the above dacoity; and 4th count, privity to the above-mentioned dacoity.

CRIME ESTABLISHED.—Knowingly receiving property acquired by dacoity.

Committing Officer, Mr. C. W. Mackillop, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 22nd May 1852.

Remarks by the officiating sessions judge.—"The prosecutor's house was attacked on the night of the 29th February 1852, or 18th Phagoon 1258 B. S., by about twenty or thirty dacoits, who wounded him with a sword on the head and carried away property valued at rupees 3,947-10.

"Four pieces of cloth, identified by the prosecutor, were found in the house of prisoner No. 11. She stated, both before the darogah and before the magistrate, that Huree Raot had deposited them there, but had promised to remove them shortly. In this court she declared they were her own property, but altogether failed to substantiate her claim.

"Prisoner No. 12 (brother of prisoner No. 7 of the Statement No. 8 for this month) produced the property marked 11 to 21, which was found buried in his house under a bush.

"I am of opinion that the confessions, in the Mofussil and before the magistrate, of Dheermony Tatin, prisoner No. 11, and Nitae Raot, prisoner No. 12, which have been properly attested, are sufficient to convict them of knowingly receiving property acquired by dacoity; but further than that, I do not consider that they took any active share in the robbery committed in the prosecutor's house; and I therefore sentence Nitae Raot, prisoner No. 12, to five (5) years' imprisonment with labor in irons, and Dheermony Tatin to three (3) years' imprisonment with labor suited to her sex."

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June 24.

Case of DHEERMONY TATIN and another.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—"This is an appeal. I see no reason to interfere with the sessions judge's sentence. The prisoners confessed in the Mofussil and before the magistrate; and they produced the plundered property themselves, which was recognized by the prosecutor's witnesses."

PRESENT:

W. B. JACKSON, Esq., *Judge*.

MUSST. DEOONEE

versus

NIRPUT CHOWKEEDAR (No. 1), LALA CHOWKEEDAR (No. 2), TORUL CHOWKEEDAR (No. 3), HOOLAS PASBAN (No. 4) AND OOMUN PASBAN (No. 5).

1852.

June 25.

Case of NIRPUT CHOWKEEDAR and others.

The prisoners, in a drunken brawl, killed the deceased for not sufficiently rewarding them for carrying off his nephew's betrothed.

CRIME CHARGED.—Wilful murder of Boonead Dome, deceased, on the 30th December 1851.

CRIME ESTABLISHED.—Culpable homicide of Boonead Dome, deceased.

Committing Officer, Mr. G. G. Balfour, magistrate of Moonghyr, Bhaugulpore.

Tried before Mr. R. N. Farquharson, officiating sessions judge of Bhaugulpore, on the 15th April 1852.

Remarks by the officiating sessions judge.—"Prisoners all plead 'not guilty.'

"It appears, on the clearest evidence, that deceased met with his death from blows inflicted by *lattees* at the hands of the five prisoners. Deceased was a strong hale man, between twenty-five and thirty years of age.

"The circumstances of the case are shortly these:—Durreeao, witness No. 1, nephew and adopted son of the deceased, had contracted marriage with the daughter of one Jeetun, witness No. 5. There being some demur on the part of the bride's father as to giving her up to her husband, Durreeao procured the assistance of the five prisoners, and carried her off by force, a custom it seems not uncommon among the Dome class, to which all the parties belong. The five prisoners were to receive one rupee for their trouble. Having received the promised guerdon, they spent part of it in drink, when, being somewhat elevated by liquor, they demanded more money from deceased; and on his refusing, set on him with their *lattees* and beat him and fractured his skull. They then bound him hand and foot, slung him on a bamboo, and made four men who were present (witnesses Nos. 2, 3, 4 and 5), carry him off towards mouza Juta Sagur; but on the road, finding he was dead, they dismiss-

1852. June 25. Case of NIRPUT CHOWKEEDAR and others.

ed the four carriers, and threw the body into the jungle, where it was discovered four days afterwards by the thanna people, (witnesses Nos. 8, 9 and 10,) on the pointing out of the prisoners Nos. 3 and 4. It was then brought to the village, duly identified by witnesses Nos. 11 and 12, and sent in to the civil assistant surgeon, who deposes before me to death having been caused by blows of some blunt weapon, such as the *lattees* produced in court.

"The prisoners plead variously: some, that they know nothing of the matter, and others that deceased was the aggressor and at enmity with them for other causes. The witnesses cited by them having, before the magistrate, denied all knowledge of the facts, were not summoned before me. The prisoners' pleas are altogether unsupported and entirely unworthy of credit. • •

"The jury find a verdict of *shebah umd*, or culpable homicide, in which I concur, and sentence all the prisoners to the full extent of my powers, seven (7) years' imprisonment with labor and irons, *first*, because it appears, on the evidence, that the attack was altogether unprovoked; *secondly*, because three of the prisoners are chowkeedars appointed by authority to keep the peace; *thirdly*, because the after circumstances of binding and carrying away deceased, either that living he might not appear against them, or being dead they might make away the body, are such aggravations of the crime as call for the severest punishment. It should be mentioned that it appears on evidence, that though the prisoners had been drinking, they were by no means deprived of reason by intoxication, as further proved by the method observed in the after circumstances above alluded to. One of the prisoners (No. 1) confessed to the crime before the magistrate; but repudiates his confession before me. Witnesses Nos. 16 and 17 depose to the confession, and its being voluntarily rendered to the magistrate. This confession, though by no means requisite to bring the crime home to the prisoner, is corroborative of the view I have taken of the case."

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—"I see no reason to interfere. The prisoners beat deceased for a long time together with *lattees*, and when he appeared nearly dead, they carried him away and hid him in the jungle, where he died."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

LUKHEE KANTH CHATTOORJEE

versus

MONIRUDDEEN MEERDHA (No. 19, NON-APPELLANT), BODEN MUNDUL (No. 20), RAMCHAND MUNDUL (No. 21), GOLUCK MUNDUL (No. 22), RAMSOONDER MUNDUL (No. 23) AND RAMDHON DASS (No. 24).

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June 25.

Case of BODEN MUNDUL and others.

The evidence for the prosecution not being considered sufficient for the conviction of the prisoners, they were acquitted.

CRIME CHARGED.—1st count, Nos. 19 to 23, dacoity in the house of the prosecutor, and plundering property therefrom, valued at rupees 285-13-0, during the night of the 17th March 1852, corresponding with the 5th Cheyt 1258 B. E., and 2nd count, No. 24, having a part of the plundered property in his possession, knowing it to have been obtained by robbery by open violence.

CRIME ESTABLISHED.—Nos. 19 to 23, dacoity and No. 24, knowingly possessing property obtained by dacoity.

Committing Officer, Mr. H. Rose, joint magistrate of Khoolneah, Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 19th May 1852.

Remarks by the sessions judge.—" On the evening of the 18th March the chowkeedar (who was very dilatory and has not been sent in) reported at the thanna, which is four *coss* from the scene of the occurrence, that about the middle of the third watch of the previous night, prosecutor's house was attacked by dacoits. The next morning the darogah proceeded to the spot, took the deposition of the prosecutor, an inventory of plundered property, &c. The prosecutor deposes that he had just returned, after having gone out for some purpose, when observing lights and people outside his house, he called out; a voice answered him, which seemed like that of Moniruddeen (formerly his servant), who was apprehended, and confessed on 20th idem, both before the police and the joint magistrate. Witnesses Nos. 1 to 3, neighbours, who ran out on hearing prosecutor's cries, recognized prisoner No. 20, who with two others, seized witness No. 1. Prisoners Nos. 21 and 22 were also seen by witnesses among the departing dacoits. In the confession are named prisoners Nos. 20 to 23 and Govind Biswas, uncle of prisoner No. 24, whose house was searched on the 23rd, and property Nos. 1 to 5 was found in his house. Prisoner No. 24 claimed it as his own; but it proved to be prosecutor's.

1852. "The prisoners deny; but their witnesses do not prove their *alibi.*

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Case of BODEN MUNDUL and others.

"I tried the case under Act XXIV. of 1843."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"The prisoners Nos. 20, 21, 22, 23 and 24 have appealed. The four first prisoners plead enmity with the prosecutor, and allege that he tutored his discharged servant Moniruddeen to implicate them. The witnesses speak to the recognition of these prisoners by torch-light at the time of perpetrating the dacoity, but I cannot place confidence in their evidence. The witness Nitai was examined on the 20th; he stated that he informed the chowkeedar that he had identified the prisoner Boden. The chowkeedar made no mention of the fact in reporting the occurrence to the darogah. The other witnesses were not examined till the 22nd *after the apprehension of the prisoners*, and the record does not show that they had ever mentioned to any one that they had recognized the prisoners. The property found in the house of the prisoner No. 24 is claimed by him as his own: the articles are of a common kind and of little value, and are not capable of certain recognition. Not satisfied with the evidence against the prisoners, I acquit them and direct their release."

PRESENT:

A. J. M. MILLS, AND R. H. MYTTON, Esqrs., *Officiating Judges.*

GOVERNMENT

versus

HURCHUNDER GOOHO (No. 3), GOURCHUNDER GOOHO (No. 4), HURMOHUN GOOHO (No. 5), SHEIKH MAHOMED HOSSEIN (No. 6), ALEE MAHOMED (No. 7), NUSSUROODDIN (No. 8), ZURREEF (No. 9), KALYE (No. 10), HANEEF KHAN (No. 11), SHEIKH ZUMEER (No. 12) AND EDOO (No. 13).

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Case of HURCHUNDER GOOHO and others.

Charge, murder. Nine prisoners convicted by the sessions judge, and recommended to be transported, acquitted, on the great improbability of the truth of the evidence to recognition at night, and gross inconsistencies and discrepancies. Two convicted on their own confessions. Attention of judge called to the importance of examining the *thanna* papers to ascertain when, and under what circumstances, the evidence of important witnesses was obtained.

CRIME CHARGED.—1st count, wilful murder of Eshurchunder Gooho; 2nd count, riot attended with the culpable homicide of Eshurchunder Gooho; 3rd count, concealing the circumstances of the case by throwing the body of the deceased into a tank.

Committing Officer, Mr. H. C. Halkett, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 18th May 1852.

Remarks by the officiating sessions judge.—"The prisoners No. 3, Hurchunder Gooho; No. 4, Gourchunder Gooho; No. 5, Hurmohun Gooho; No. 6, Sheikh Mahomed Hossein; No. 8, Nussurooddin; No. 9, Zurreef; No. 10, Kalye; denied the crime with which they were charged in the Mofussil, before the magistrate and in this court. The prisoner No. 11, Haneef Khan, confessed in the Mofussil and denied his guilt before the magistrate and here. The prisoners No. 12, Sheikh Zumeer, and No. 13, Edoo, confessed their guilt in the Mofussil and before the magistrate, and denied it before me. The prisoner No. 7, Alee Mahomed, died in the jail hospital on the 10th instant, whilst under trial.

"Witness No. 1, Kishore Mahomed, deposes, that on Thursday the 10th Magh last, about 8 o'clock in the evening, he went to the *cutcherry* of the deceased Eshurchunder Gooho, which forms a part of his, deceased's, *baree*, when he saw the deceased, and the prisoner No. 12, Zumeer, and the witness No. 2, Gokool Dhopee, sitting together there. After a short time witness, thinking that some people were coming towards the *cutcherry*, told deceased that the possessors of the 12 annas share of the *talook* had threatened for the last two years to kill him, and that they were now coming to do so, and that he had better go into the inner part of the house where the women live,

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as there was no occasion for him to remain where he was. The deceased got up and went, and Gokool Dhopee followed him, carrying some fire in an earthen dish. When the deceased had arrived at the door of the *zenana*, ten or twelve men coming from the east and some others from the south rushed upon him, seized him, put a cloth round his neck, and beating him carried him off forcibly towards the east. That the prisoner No. 12, Zumeer, who had before been sitting with witness in the *cutcherry*, and Futtuk, Jenabodeen, Shumsuroodee, and Acbar, seized him (witness) and beat him; that the deceased laid hold of a tree that was near and struggled with the prisoners for awhile, when they carried him off calling out to release witness, which the others did, and went away; that witness immediately gave the alarm, crying out that Eshurchunder Gooho was murdered, when witness No. 4, Rajoo, witness No. 5, Bhyrub, and witness No. 3, Wahed Alee, came up and said that they had seen the deceased carried away. Not knowing where they had taken deceased, by the advice of Nobokishen Gooho, a number of people were set to work to seek for deceased, but could find no traces of him. Witness remained all night in the *cutcherry*, and about 5 in the morning was sent off by Nobokishen Gooho, cousin of deceased, accompanied by Wahed Alee, with a letter to Atta Hossein, cazee in Burrisaul, giving him an account of what had happened to Eshur Gooho; when he had got as far as Kashipore, one Rubbeeoollah came up and told him that the body of Eshurchunder had been found on the north side of a tank call Puddoopoker, and not far from his house, and witness and his companion were to give this additional intelligence to Atta Hossein, Cazee. Having arrived in Burrisaul they gave the letter to Atta Hossein as directed, and told him what they had heard, when he said he would give a petition to the magistrate on the subject, and sent them back to give their depositions at the thanna; that the inquiry had commenced in the Mofussil before witness returned, and the body of Eshurchunder had been sent in to the sudder station. Deposes further that there is a quarrel regarding land between the deceased and prisoners, the deceased having about two years ago obtained a decree in his favor in a suit under Act IV. of 1840; that he has heard that Zumeer and Edoo, who were in the *cutcherry*, had come to see what the deceased was doing, and that Edoo returned to the prisoners and told them. They are both *ryots* and servants of prisoners. Witness was a watchman of deceased, and went to his house as usual to perform his duties there; that the place where deceased was seized was ten or twelve *haths* distant from the *cutcherry*. The tank in which the body was found is two hundred *haths* distant from the *cutcherry*. The *baree* of the prisoners is about fifty *haths* distant from that of the deceased towards the

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north. When the deceased was seized he called out *ma! ma!*, three times, and made a half stifled sound. He was about thirty-five years old, and in good health. The night was dark; but witness recognized all the prisoners by the light in the *cutcherry* at the time; they had *lattees* in their hands. Points out and identifies all the prisoners in court as parties to the attack upon, and carrying off, of Eshurchunder Gooho.

"Witness No. 2, Gokool Dhopee, deposes, that on the evening of the Thursday in question, he went to the *cutcherry* of the deceased and found him there, and witness No. 23, Bholye Chung, witness No. 17, Adoor, witness No. 30, Mungul, sitting with him. After a short time prisoner No. 13, Edoo, and prisoner No. 12, Zumeer, came in and sat down, when Edoo asked deceased to let him have some land to cultivate; he agreed, when Edoo, Adooraree and Mungul went away; witness, Zumeer and deceased remained there, and shortly afterwards witness No. 1, Kishore Mahomed, came in, and after a little time he said to the deceased some men are coming up from the east, you had better retire into the *zenana*. He got up and went, and witness followed him with fire; when suddenly ten or fifteen men came upon them, and seized the deceased; he called out *ma! ma!* and made a half stifled sound, and they carried him forcibly away, beating him all the time. Haneef Khan struck witness with a stick, when he was trying to defend Eshurchunder Gooho. He saw that four or five men had seized Kishore Mahomed, and then went into the *zenana* to tell the wife of deceased what had happened; when he came out they had all gone away. Heard Kishore Mahomed calling out that they had carried off deceased, and went with others to look for him, but could find no traces of him. In the morning just after Kishore Mahomed and Wahed Alee had been despatched with a letter, giving an account of the occurrence, to Atta Hossein, cazee in Burrisaul, the dead body of Eshurchunder Gooho was found in the Puddoopoker tank, where witness saw it floating, with marks as of blows on the body and a wound on the head. The thanna jemadar came shortly after and took the body out of the tank, after which witness did not see it. The night was dark; but witness knew the prisoners by the light in the *cutcherry*, as they dragged the deceased through the passage in the *cutcherry* that leads to the outside of the *baree*. They put a cloth round the neck of the deceased, and some pulled him by that, and some seized his hands and some his feet, and some dragged him away. There had been a quarrel of long standing between the prisoners and deceased, and when witness saw people coming to attack the latter he thought that they were the Goohos who had the 12 anna share of the *talook*, as he had heard that for the last two years they had been continually threatening to kill the

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deceased, who had got a decree in his favor for a 4 anna share of the *talook* two years ago; and last year some of the prisoners were charged before the magistrate by deceased with meditating a breach of the peace and put into jail in consequence.—Recognizes and identifies prisoners No. 3, Hurchunder Gooho; No. 4, Gourchunder Gooho; No. 6, Mahomed Hossein; No. 8, Nussurooddin; No. 9, Zurreef; No. 11, Haneef Khan; No. 12, Zumeer, as amongst those who attacked and carried off deceased—recognizes the *lattee* found on the bank of the tank as belonging to prisoner No. 6, Mahomed Hossein; cannot say to whom the cloth or *gumcha* belongs which was found with the latter; and never heard that the deceased had had an attack of epilepsy.

"Witness No. 3, Wahed Alee, deposes, that on the evening of the day in question, the deceased sent him to a place called Ootur Khunwah, to a party to whom he had been before, but whose name he does not know, to bring him one rupee which was owing to him; that he started to do so, and coming to the *baree* of the prisoners, he saw certain *latteeals* assembled there, and one of the Goohos talking with them; that when they saw witness they stopped. He then went on to execute his mission, and not finding the party at home, sat down and waited for some time; but on his not coming, and his wife saying that she would send the money on the next day, he returned. When he came to the south of Budeenath Gooho's tank he heard a noise in the house of the deceased, and as he had shortly before seen the prisoners with *latteeals* collected at their house, and as he knew there was great animosity between them and his master, he ran forward to the east side of the deceased's house, when he saw the prisoners forcibly carrying off the deceased and went up to them; when prisoners No. 4, Gourchunder; No. 3, Hurchunder; No. 11, Haneef Khan; called out to seize him, and prisoner No. 8, Nussurooddin, and No. 9, Zurreef, with sticks in their hands, came up to him, and he ran away. This witness, in addition to the above, corroborates all that has been previously stated, and certifies to the long standing quarrel between the deceased and prisoners; that they were constantly threatening to kill him; and that through fear of them he had had a tank to bathe in dug within the enclosure of his *zenana*—never went out, and had closed up all the ways leading to his house. Recognizes and identifies all the prisoners save No. 10, Kalye, as parties to the attack and forcible abduction of deceased, and states that the *lattee* found on the bank of the tank in which the body of the deceased was, belongs to Mahomed Hossein. This witness states further that all the women of the defendants had been removed from their *baree* about three months ago, and sent to their relatives, and there was only one slave girl remain-

ing. Has heard that deceased complained against the prisoners in the magistrate's court two years ago, stating that they were preparing to murder him.

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"Witness No. 4, Rajkishen Chung, deposes, that on the day of the attack, in the evening, he saw prisoners No. 8, Nussurooddin; No. 10, Kalye; No. 6, Mahomed Hossein; and Teelok Gooho; prisoners No. 3, Hurchunder Gooho; No. 4, Gourchunder Gooho; and No. 5, Hurmohun Gooho; Bhogwan Chundronat and Gopee, collected at the house of Hurchunder and Gourchunder Gooho and talking together; that on seeing witness they ceased, and shortly afterwards witness returned home; that about eight o'clock the same night, as he was passing near the house of deceased with witness No. 5, Bhyrub Chung, having gone out to watch a date tree which he had cut for the juice and fastened a *gumlah* to, he heard Kishore Mahomed calling out that the Goohos of the 12 anna share had seized his master Eshurchunder and killed him, and that hearing that noise he went to the house of deceased, when he saw about twenty-five people carrying off a man, some dragging him by the hands and some by a cloth that was round his neck; only knew that it was deceased by what Kishore Mahomed said; that prisoners No. 8, Nussurooddin, and No. 6, Mahomed Hossein, rushed upon him and Bhyrub, when he went into the house of deceased; that he went with others to endeavour to find the deceased, but after a fruitless search returned. Hearing the next day that the body had been found in the tank as before described, went and saw it in the water. There were marks of blows on the back. Saw the forcible carrying off of the deceased from a distance of two or four *haths* only. This witness corroborates in all respects the evidence previously given regarding the quarrels that had taken place, and the ill-feeling that existed between the parties, and recognizes and identifies prisoners Nos. 3, 4, 6 and 7, as parties to the forcible abduction of deceased.

"Witness No. 5, Bhyrob Chung, corroborates the above, except as to seeing the prisoners assembled, and consulting together in the evening of the murder, and recognizes and identifies as participators in the crime prisoners Nos. 4, 3, 5, 6, 10 and 11.

"Witnesses Nos. 17, 18 and 19 corroborate the statements above given, as much as it is possible for those to do who were not eye-witnesses of the deed.

"Witness No. 20, Atta Hossein, cazee, the agent of the deceased in Burrisaul, and an intelligent and respectable man, deposes, that on the 11th Magh last, about ten or eleven o'clock in the morning, witnesses Nos. 1 and 3 came to him in Burrisaul, bringing with them a letter from the wife of Eshurchunder Gooho, informing him that on the previous night Teelokchunder Gooho,

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Hurchunder Gooho and others, had attacked her husband and carried him off. They told him at the same time (what they had heard on the road) that Eshurchunder Gooho had been murdered and his body found in the tank as before described; that on hearing this, he, witness, gave a petition immediately to the magistrate, and sent witnesses Nos. 1 and 3 back to give their depositions before the darogah. Witness states that a quarrel commenced between the prisoners and deceased in 1256 B. S., and since then that they have had about fifty cases pending between them; that they dispossessed the deceased of a 4 annas share of his *talook*, which he recovered by a suit under Act IV. of 1840; that deceased lived in perpetual fear of the prisoners, and had made a tank to bathe in inside his *zenana*, which he had fortified with a pucka wall to protect himself from them, and never ventured out alone; that he himself had heard the prisoners threaten to kill the deceased; and learnt from others that they were in the habit of threatening to do so. The prisoners removed all their women and families from their houses about six months ago, and sent them to their relatives, and the reason witness believes to be that they contemplated the murder of Eshurchunder, and wished their families to be out of the way when the inquiry took place. In the month of Assin 1257 B. S., the deceased complained against some of the prisoners as interfering with the land for which he had obtained a decree under Act IV. of 1840, and being in Burrisaul, intelligence was sent to him that they had agreed to murder him, when he gave a petition to the magistrate, and it being proved that they had evil intentions towards him, they were punished accordingly; that five or six years ago the deceased lent a sum of money to the prisoners Nos. 3 and 4, and on their failing to pay, obtained a decree against them, but they then evaded execution, and in Magh last, the deceased gave in a petition to the Burrisaul moonsiff, through witness, to attach and sell their property, and obtained an order to do so on the 11th idem, the day before which the deceased was murdered. The decree was for from rupees 2 to 300. The deceased had no enmity with any other people but the prisoners.

"Witnesses Nos. 21, 22, 23, 24 and 25 corroborate what has been already stated.

"The civil assistant surgeon deposes that he examined the body of Eshurchunder Gooho; that there were two incised wounds on the crown of the head, each of which penetrated to the bone, and were about three inches in length. Upon opening the skull there were two fractures corresponding with the external wounds, as also a large quantity of blood extravasated upon the surface of the brain, and that these injuries caused death; that the wounds had been inflicted with a sharp cutting instrument, a

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spear or *ddo*. The viscera of the deceased were all sound and healthy, as far as the witness could judge; and he did not, to the best of his recollection, observe any other wounds or blows upon the body besides the ones above described.

Prisoner No. 3, Hurchunder Gooho, denies the charge—defends himself by an *alibi*, and says he can prove also that Eshurchunder Gooho died from epilepsy; that Neel Comul Gooho, a cousin of deceased, inflicted wounds upon the body, and got up this complaint against him and the other prisoners on account of the quarrel between them.

"Prisoners Nos. 4, 5, 6, 8, 9, 10 and 11 defend themselves as above. Nos. 12 and 13 reply that their witnesses will prove that the deceased died from epilepsy. * *

"Prisoners Nos. 12 and 13 confessed before the magistrate their participation in the case; and their confessions have been duly authenticated, and corroborate most fully, in all material points, the evidence already given. * *

"The assessors, with whose assistance the case was tried, convict the whole of the prisoners of riotously attacking, carrying off, and murdering Eshurchunder Gooho, and of concealing the circumstances of the case by throwing his body into a tank; and in this verdict I concur. I think that the evidence in this trial is almost as strong as it could be. The long continued animosity between the prisoners and the deceased, the constant threats that they had used towards him, the measures he took to protect himself from them, their removing their women and families from their houses some time previous to the attack, the account of the attack and forcible abduction of the deceased, the finding the wounded body in the tank as related by the witnesses, coupled with the confessions before the magistrate of two of the prisoners, form a continuous chain of evidence, in which no link is wanting. Numerous witnesses have appeared to substantiate the defence, but I can attach no weight to their testimony; for nothing whatever was said by the defendants regarding the death of the deceased by epilepsy either at the thanna or before the magistrate, and such a line of defence was clearly resolved upon only after committal to the sessions, probably by the advice of the vakeels whom they then obtained to conduct their case; whilst it is wholly incredible that if Eshurchunder Gooho had died suddenly and from such a cause, his wife and relatives would, in a moment of grief and excitement, have devised such a plan to get up a false charge against the prisoners, inflicted wounds upon the body of their relative ere it was cold, carried it to a distance from the house, thrown it into a tank, and in the course of a single night have suborned such evidence as was laid before the darogah on the succeeding day.

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"I recommend that each of the prisoners should be imprisoned for the term of his natural life."

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and R. H. Mytton.)—"The prisoners being defended by Mr. Norris, Baboo Ramapersaud Roy, senior pleader, appeared as advocate on the part of the Government.

"Mr. Norris contended at considerable length that the entire story from beginning to end was a fabrication. He pointed out that the evidence of the witnesses at each inquiry, *viz.*, before the darogah, before the magistrate, and in the sessions court, was discrepant, and that each was inconsistent with the other. He laid great stress on the facts stated in the Mofussil inquest, and reports that the body was floating on the morning after the alleged murder, and that when taken out of the tank, water was oozing out from the mouth and nose. He observed that a body will not float unless buoyed up by external aid until putrefaction takes place, which would not be for three or four days, and a body cast into the water after death would not take water into the stomach, and consequently water would not be found oozing from the mouth and nose. In support of this Mr. Norris quoted from several parts of Chapter 14 of Beck's Medical Jurisprudence.

"From this he deduced that the deceased must, as asserted by the prisoners at the trial in the sessions court, have died of epilepsy before his body entered the tank, and quoting from other parts of the same chapter, he argued that the wounds in the head must have been inflicted after death, in order to support a charge of murder. The enmity existing between the two branches of the family of Gooho, is only on account of lawsuits and quarrels about land. Such animosities are common to almost all the land-holders in Bengal, without instigating them to commit murder.

"In reply Baboo Ramapersaud observed.—The body was found in the corner of a shallow tank, and the inquest paper states that there were water-weeds on it. It might and probably was supported by these weeds. The water described as oozing from the mouth and nose might have lodged in those cavities, and did not necessarily come from the stomach. The prisoners before the magistrate did not in their answer to the charge assert that deceased died of epilepsy. One of them, indeed, in a petition presented to the magistrate on the 30th Magh, stated that deceased was murdered, but by another party, *viz.*, Kaloo. If the evidence had been tutored, it would have been direct to the fact of murder. Witnesses would have sworn to seeing it committed.

"After carefully considering the evidence recorded at all stages of the inquiry, we entertain no doubt whatever of the murder having been committed.

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"The evidence of the surgeon who examined the corpse is, distinct and positive as to the appearances in the interior of the skull corresponding with the exterior wounds being such as would produce death, and that they could not have been inflicted after death.

"It is quite true that bodies will not float for two or three days after death; but the necessary conclusion to be drawn from this is not that the deceased died of epilepsy. Had this been the case the body would not have floated any the sooner. Unless it were supported by weeds or mud it must equally have been in the water some days before it came to the surface. If then the deceased died of epilepsy, and his corpse floated in natural course, he must have been dead at least three days before the inquiry commenced. His death then must have been notorious; and the prisoners when charged with murdering him the night before, would at once have urged this excellent (if true) answer; whereas it was not even hinted at until 17th March, *i. e.*, nearly two months after the inquiry had commenced, and five weeks after the prisoners had been examined by the magistrate. The witnesses were not questioned as to the depth of water at the spot where the body was found, and whether it actually floated or touched the bottom. They stated that the body was within three *cubits* of the *edge* of the tank, and there was not more than *three cubits* of water in the *middle* of it. The explanation suggested by the Government pleader as to the circumstances of the body, is therefore, in our opinion, the most probable.

"The chowkeedar Rubbyoollah, who first gave notice to the police of the deceased being missing, and of his body being found, stated that persons *unknown* had carried him off the previous night. The widow at the same time, writing to her husband's *mookhtar* at Burrisaul, named *no one*. She merely stated, that enemies had seized and carried off her husband, and that he was not to be found. The bearers of this letter were Kishore Mahomed, witness No. 1, and Wahed Alee, witness No. 3. The *mookhtar* immediately drew out and presented a petition to the magistrate, charging the prisoners Nos. 3, 4, 6, 7, and two other persons, *viz.*, Teelok and Bhugwan Gooho. He must have derived this information, if from any one, from one or both of the above witnesses; and from the general practice of *mookhtars* it may be inferred that he omitted no name of those, whom they said that they had identified among the assailants of their master. Kishore Mahomed was sent by the *mookhtar* to give his deposition at the thanna, but the names of those he deposed to recognizing do not tally with those in the petition. Two are omitted, and four new ones given.

"On trial at the sessions, the eye-witnesses have deposed to identifying from Nos. 7 to 17 of the prisoners, and others not

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on trial. The occurrence took place at eight o'clock in the month of January on a dark night. Some of the witnesses say that they recognized the accused by the light of a *cheragh* in the *cutcherry*, one by the stars, and others by voice.

"It is highly improbable that persons would have been able on a dark night, in such a sudden and transitory affair as this was, to recognize above one or two, if any, of the assailants. It is preposterous to suppose that, under the circumstances, they could have recognized the number which they now pretend to have done.

"The variation in the number and individuals stated to have been recognized by each witness at each inquiry is most remarkable, and is alone sufficient to invalidate their testimony.

"The following Table shows at a glance the discrepancy in point of number :—

Names of witnesses and their number in the Calendar.	Number of persons said to have been recognized before the police.	Number of persons said to have been recognized in the foujdaree court.	Number of persons said to have been recognized in the sessions court.
1. Kishore Mahomed,	By sight 6, ...	By sight 14, ..	By sight 17.
2. Gokool Dhopee, ...	By voice 1, ...	By sight 10,...	By sight 9.
3. Wahed Alee, ...	By sight 4, ...	By voice 9,...	By sight 4. By voice 13. — 17.
4. Rajkishen, ...	... .	By sight 6,...	By sight 8.
5. Bhyrub, ...	By voice 4, ...	By sight 7,...	By voice 4. By sight 3. — 7.

"We now proceed to review the evidence of the principal witnesses *seriatim*.

"No. 1, Kishore Mahomed.—The difference in the information as to the offenders, which he must have given to the *mookhtars*, and that to the police has already been noticed. His deposition at the thanna was on solemn affirmation. He then stated in answer to a distinct question that he had *recognized no others* than he then named. His subsequent statements to recognizing others must therefore be utterly untrustworthy. Moreover, he states, that four men seized and held him. It is grossly improbable, that under such circumstances he would have had

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his wits about him sufficiently to identify those who seized his master at a little distance off, even had it been in broad daylight instead of a dark night.

"Gokool Dhopee, No. 2.—The evidence of this man as given to the darogah bears upon it greater appearance of truth than that of any other witness at any stage. It is to this effect:—He was carrying fire for his master and was close to him; when his master was seized he caught hold of his legs to retain him, on which one of the assailants pushed him away, saying, 'what 'have you come for?' He could recognize no one, but thought from his voice that the person who pushed him away was Haneef. This man, as also Zumeer and Edoo, on being arrested, made confession of complicity, naming their partners in the crime.

"Evidence to recognition obtained after the names of the offenders are made known by confessions is very little to be trusted. The three remaining witnesses were not forthcoming till after the above confessions were recorded: two of them a week, and one of them eleven days after the inquiry commenced. For this reason, if no other had existed, their evidence must be looked upon with great suspicion. But there are other and strong grounds for rejecting their evidence.

"Wahed Alee, No. 3.—This person was a servant of the deceased, not one likely to be an unwilling witness, and to hang back if he really knew anything essential to the case. He it is who is not forthcoming as a witness before the police till the 3rd February, eleven days (as above noted) after the inquiry commenced. He states that he was sent by his master on the day of the occurrence to get money from a person whose name, nevertheless, he cannot recollect. He went through the ground of the principal prisoners' residence, his master's mortal enemies, and there saw them and others (twenty-two of whom he names) sitting in council. At the time of the occurrence he recognized seventeen men. This man contradicted himself grossly before the magistrate.

"Rajkishen, No. 4, to the darogah stated, that he could recognize *no one*. The atmosphere of the courts at Burrisaul, however, effected a change, and to the magistrate he said he recognized six, to the sessions judge eight.

"Bhyrub, No. 5, to the darogah named four men as recognized by their voices. He went much further before the magistrate and sessions judge.

"These witnesses have endeavoured to explain the inconsistency in their depositions by declaring the police did not take down all that they said, having connived with the offenders.

"The proceedings of the police by no means evince any bias in favour of the prisoners, nor any desire to screen them; but

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the contrary. Rubbyoollah Chowkeedar was actually sent in by the darogah to be punished for not naming them.

"Strongly impressed as we are with the opinion that the deceased was murdered in pursuance of a pre-conceived plan, and that suspicion has fallen on the right parties, we cannot, on evidence of such witnesses as those adduced in this case, convict. The prisoners, against whom the main proof is their evidence, must of necessity be acquitted. These are Nos. 3, 4, 5, 6, 7, 8, 9 and 10.

"Haneef, No. 11, made a circumstantial confession to the darogah at an early stage of the inquiry, and it bears the stamp of truth; but in a case such as this, which bears evidence on the face of it of so much tutoring and tampering, we hesitate to convict on a Mofussil confession unsupported by any corroborating proof which can be relied upon; he is therefore also acquitted.

"Zumeer and Edoo, Nos. 12 and 13, have confessed both before the police and magistrate to taking an important part in the atrocious scheme for the murder of the deceased; and the truth of their confessions is much corroborated by the evidence of Adoo Ray and Mungul. We convict them of being accomplices in the first count of the charge, and as they are not the principal offenders sentence them to imprisonment in transportation for life.

"The sessions judge has evidently devoted much time and attention to this trial, but we cannot resist coming to the conclusion that he did not examine the thanna papers as closely as he should have done. In this country, where witnesses are so easily procurable, so readily biassed, the time and circumstances under which they were obtained and what they first said and recorded, are points most essential to consider in searching for the truth and weighing the value of evidence."

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

RADHAKISHTO DEO

versus

MAHOMED WALLEE (No. 6) AND ESUFF (No. 7).

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The sentence passed upon the prisoners in the sessions court, was confirmed by the Nizamut Adawlut.

CRIME CHARGED.—1st count, tumultuously invading the bazar of Hydergunge, and forcibly plundering therefrom salt, oil and other articles, the property of sundry persons frequenting that market; committing an assault upon and wounding Amjad, Kamoo, Bindabun Sil and Bishtoram Mallee, and setting fire to the zemindar's *cutcherry* and to the dwellings of Booddimunt Kamar and Amjud Neghabun; and 2nd count, aiding and abetting in the above.

CRIME ESTABLISHED.—Tumultuously invading the bazar of Hydergunge, and forcibly plundering therefrom articles, the property of sundry persons frequenting that market, committing an assault upon and wounding Amjud, Kamoo, Brindabun Sil and Bishtoram Mallee, and setting fire to the zemindar's *cutcherry*, and to the dwellings of Booddimunt Kamar and Amjud Neghaban.

Committing Officer, Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 11th May 1852.

Remarks by the sessions judge.—"My letter of reference to the Presidency court, No. 89, dated the 16th February last, contained a full account of the circumstances marking this case. Briefly recapitulated they are as follows:—

"'An influential zemindar of this district, since deceased, 'founded a new *hât* in the immediate neighbourhood of one of 'long standing.

"'The consequence was injurious to Ruttungunge, the older '*hât*; and its proprietor, availing himself of the opportunity 'afforded by Chowdry Bux Allee's death, and the succession of 'his daughter, seems to have resolved to effect its ruin, and by 'so doing restore his own market to its former prosperity.

"'On the 7th of October, about 4 or 5 o'clock in the after'noon, four boats, in which were 150 or 200 men, retainers of 'Gunga Chunder Chuckerbutty, and headed by Wallee (not 'apprehended), the farmer of the neighbouring *hât*, Ruttun'gunge, made their appearence at Hydergunge. The men landed, 'Wallee armed with a sword and stick, and having by his side a 'torch, and the rest provided with sticks. They commenced 'to act riotously, and Wallee attacked and wounded Amjud, the 'watchman of the market, with his sword. The men who

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'accompained Wallee then proceeded to a general assault of the 'people attending the *hát*. The result was that Kamoo, Brindabun and Bishtoram were wounded, much of the articles 'brought for sale to the market carried off, and Wallee setting 'fire to the zemindaree *cutcherry*, it spread to the houses of 'Amjud and Booddimunt Kamar, and the three were burnt 'to the ground. The rioters then dispersed, some apparently in 'the boats, and some by land.'

"The prisoners indicted on the present occasion are Mahomed Wallee, the farmer of the Ruttungunge *hát*, and leader and director of the affray, and Esuff, who appears to have acted with the prisoners previously tried and convicted as inferior agents. The two are brothers-in-law.

"Both pleaded 'not guilty.'

"The evidence to the fact is derived from six witnesses, who speak distinctly to the share the prisoners took in sacking the market. Mahomed Wallee is shown to have been armed with a sword with which he wounded Amjud, the watchman of the market, and to have fired the zemindaree *cutcherry*. The prisoner Esuff is proved to have shared in the riot, but does not appear to have taken an especially prominent part in it. The evidence given on this occasion admits of satisfactory comparison with that given by the same witnesses on the occasion of the former trial, especially when the lapse of time is considered.

"The defence adopted by Mahomed Wallee was an *alibi*; that of Esuff a denial of participation in the riot. I have not the slightest faith in the evidence of the two witnesses who support Mahomed Wallee's plea of absence when the riot took place. It is contradicted by the strongest proof, both in this and the previous trial, that he was present and headed the rioters as farmer of the rival *hát*, and was conspicuous throughout. It is also contradictory in itself, and was given with a degree of exactness as to the essential date, the 22nd of October, which is quite incompatible with an ignorant native's recollection of what occurred upwards of eight months ago.

"The remaining witnesses spoke merely to having seen the riot at Hydergunge *hát*, and to not having noticed the prisoners among the rioters. The verdict of the jury found the prisoners guilty on the first count of the indictment. In this finding I concur; and with reference to the degree of criminality of each prisoner I sentenced Esuff, as inferior agent, to three (3) years' imprisonment, with labor and irons, (a sentence confirmed by the Presidency court in the cases of the previously convicted prisoners,) and Mahomed Wallee, as principal, who wounded Amjud with the sword and fired the bazar, to five (5) years' imprisonment with labor and in irons."

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—"This case is in continuation of a trial reported in the

March number of decided cases. The prisoner Wallee has appealed. Both prisoners were named in the earliest statements of the prosecutor and witnesses, but have evaded apprehension. The evidence to their identity has been distinct and consistent through every stage of the proceedings. I concur with the judge in rejecting the *alibi* set up by Mahomed Wallee. It is clearly established that he was the head of the rioters, and directed the attack on the bazar, and himself wounded Amjud. I confirm the convictions and sentences passed by the sessions judge on both prisoners."

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PRESENT:

J. R. COLVIN, ESQ., *Judge.*

A. J. MILLS, ESQ., *Officiating Judge.*

CHINIBASS NAPIT

versus

OKHIL BEWAH KAITANEE (No. 2), NUDDEARCHAND SIRCAR (No. 3) AND BRIJONAUTH NEWGEE (No. 4).

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A woman convicted as an accomplice in the murder of a child for the sake of her ornaments, and sentenced to suffer death. A party, convicted of privity to the murder, sentenced to imprisonment for seven years, with labor and irons, and another party convicted of having one of the child's ornaments in his possession, with a knowledge of its having been acquired by theft, or other clandestine and illicit means, but without proof of knowledge of the murder, sentenced to imprisonment with labor and irons for five years.

CRIME CHARGED.—1st count, theft attended with murder of Matoo Chokree, daughter of the prosecutor, for the sake of her ornaments, valued at rupees 22-7-0; 2nd count, accomplices in the above-mentioned crime; 3rd count, accessaries before and after the fact of the above-mentioned theft with murder; 4th count, aiding and abetting in the above-mentioned theft with murder; 5th count, knowingly receiving property acquired by committing the above-mentioned theft attended with murder; and 6th count, privity to the above-mentioned theft with murder.

Committing Officer, Mr. C. W. Mackillop, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 1st June 1852.

Remarks by the sessions judge.—"On the forenoon of the 30th April last, the wife of the prosecutor missed her daughter, Matoo Chokree, a child of about seven years old. Both the father and mother searched in every direction during the whole of that day, but without success; and in the evening reported the circumstance, first, to the village gomashta, and afterwards to the darogah of the sudder thanna; from whence to Kuleepore

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where the parties reside, the distance does not exceed three quarters of a mile. The darogah repaired to the spot during the night; but I cannot say that he appears to have exerted himself.

"The following day was spent in continuing the search in all the neighbouring villages.

"Early on the 2nd May one Mudhoosoodhun Doss Tautee went to the darogah, who had taken up his quarters in the village, and stated that on rising that morning he went to the well in his compound to draw water, and then discovered that the body of a child had been thrown down it during the night. He added that the prisoner Okhil Bewah had been at his house the night before, and had cautioned him against sleeping out of doors for fear of the cholera, which was prevalent in the village, and that consequently he suspected her of having deposited the body in the well. She was immediately taken into custody, and on being questioned, stated that her sister Hurro, and Mudhoosoodun Doss Tautee, had murdered the child Matoo, and placed the body in her, the prisoner's, house, and had removed it on the preceding night, she knew not where.

"She then pointed out five silver ornaments which are identified as having been worn by Matoo Chokree, concealed under the roof of a dilapidated shed, occupied by an old woman named Roopoo in the same compound, which she said had been given her as her share: two coverlets, and a native razor much stained with blood, and an earthen vessel filled with blood, were found in her house, and several marks of blood were observed on the floor, walls, and on two stones.

"The prisoner then stated that the whole of the above story was false, and that she had been urged to give an untrue statement by her cousin Nuddearchand, who was himself the murderer.

"She then proceeded to state that Nuddearchand was inside her house, when the child came there; that he then told her to go outside while he would give the child something to eat that would enable him to take the ornaments she had on her person without her knowing it; that when she had gone out, he closed the door and committed the murder, concealing the body in the coverlets; that on her re-entering the house Nuddearchand gave her the ornaments which she produced; and that on the preceding night he removed the body, and threw it into the well where it was discovered.

"Before the magistrate she repeated her statement that Nuddearchand murdered the child in her house while she was standing outside, and concealed the body under the coverlets; but, she adds, that, on the night preceding her apprehension, she herself threw the body into the well.

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"Nuddearchand denied all participation in the murder; but he acknowledged, both in the Mofussil and before the magistrate, to having overheard Okhil Bewah, prisoner No. 2, and her paramour, Brijonauth Newgee, prisoner No. 4, talking on one occasion about procuring some silver ornaments from the houses of the Napits, &c.; and on another, being the day following that on which Matoo Chokree was missed, about the removal of the corpse from the house of the former.

"The prisoner Brijonauth Newgee denies throughout.

"In this court the first prisoner pleaded 'not guilty' to the charge; but admitted that Nuddearchand told her to bring the child to her house that he might take her ornaments, and that she replied she could not do so. When her Mofussil and foujdaree confessions were read over to her, she acknowledged to having made the latter, and last part of the former, *viz.*, that criminating Nuddearchand.

"Nuddearchand pleaded 'not guilty,' but acknowledged the truth of both his Mofussil and foujdaree confessions.

"Brijonauth Newgee pleaded 'not guilty,' denied having kept company with Okhil Bewah for the last six months, and stated that enmity existed between himself and Nuddearchand.

"There is no direct proof in this case against Okhil Bewah Kaitanee, prisoner No. 2; but it is established by the evidence that has been adduced that the unfortunate child Matoo was seen early on the morning of the 19th Bysakh, the day on which she was missed, at the house of the prisoner. The ornaments worn by the deceased were pointed out by the prisoner in the place within her homestead, where she had evidently placed them for concealment after the murder. In her house numerous and extensive marks of blood were observed on the walls, floor, and coverlets. An earthen vessel was discovered, filled with blood; and a native razor, stained with blood, with which the throat had been cut, was also found there.

"The proof against Nuddearchand is confined to what his own confession furnishes; and as he affirmed before me the statements he had previously made before the darogah and the magistrate, I consider he should be judged according to their tenor.

"The proof against Brijonauth Newgee consists in the well-attested fact of his having, on the 2nd May, that is, two days after the child was missed, offered for sale to Puran Chatterjea, the mohurir of the district jail, a broken neck-ring, or *huslee*, which belonged to the deceased. It is further established that this prisoner was the paramour of Okhil Bewah.

"While the trial was still pending, I visited the spot, and examined the house where the crime was perpetrated, the place where the ornaments were concealed, and the well (now filled up)

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where the body was found. I also satisfied myself that the door in the outer wall of Mudhoo Tautee's house could be opened from the outside, and that the fastening pin could be displaced without making any noise.

"The law officer convicts Okhil Bewah Kaitanee, prisoner No. 2, of being accomplice in the theft attended with the murder of Matoo Chokree for the sake of her ornaments, valued at rupees 22-7-0; Nuddearchand Sircar, prisoner No. 3, of privity to the above; and Brijonauth Newgee, prisoner No. 4, of knowingly receiving property acquired by committing the above-mentioned crime; in which finding I entirely concur.

"The guilt of prisoner No. 2 seems identical with that of Sohochuree Moolanee, sentenced to death by the Court of Nizamut Adawlut on the 17th April last. In this case the body was not found in the house of the prisoner; but there is certain proof that the murder was committed there. I am therefore not aware of any reason that should exempt this prisoner from undergoing a similar sentence.

"I would recommend that the prisoner Nuddearchand Sircar be sentenced to seven (7) years' imprisonment with labor in irons, and the prisoner Brijonauth Newgee to ten (10) years' imprisonment with labor in irons.

"It is worthy of remark that Sohochuree Moolanee was executed at this station for a precisely similar crime on the morning of the 29th April, and on the very next morning, within three-fourths of a mile of the jail, this murder was perpetrated by a woman kept by one of the burkundauzes of the jail, who in all probability witnessed the execution; and it is still more remarkable that some hours after the body of the murdered child had been discovered, and his mistress apprehended, and after she had confessed and produced a part of the stolen property, this burkundauz should have brought within the precints of the jail, and offered for sale to one of the officers, one of the very ornaments that had been obtained by this murder.

"It would be difficult to account for the conduct of Brijonauth Newgee, were it not that the annals of crime afford very remarkable instances of persons displaying consummate craft and a high degree of cunning, both before and during the commission of an offence, although after its perpetration they have been known to act with a want of ordinary sense altogether surprising and quite irreconcilable with the skill they had previously exhibited. I need only instance the recent and well-known case of Mrs. Manning in England, who brought about her own apprehension much in the same manner as did this prisoner.

"The court will observe that the officiating magistrate has omitted to attest the depositions in this case in the manner prescribed by para. 6 of the Circular 220, dated 27th January 1837.

Had he not left the district, I should have called his attention to the point." 1852.

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Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.)—"There can be no doubt, upon her own confessions and the other evidence in this case, of the guilt of the prisoner No. 2, Okhil Bewah, as having been actively concerned in the murder; and we sentence her to suffer death.

"The prisoner No. 3, Nuddearchand Sircar, is guilty also, upon his own statements, of privity to the murder, and we sentence him to imprisonment for seven (7) years' with labor and irons, as recommended by the sessions judge.

"We do not think that it is proved against the prisoner No. 4, Birjonauth Newgee, that he sold the portions of the broken *huslee* with a knowledge of the ornament having belonged to the murdered child. But it is established that he had the property in question in his possession, and endeavoured to dispose of it, knowing it to have been acquired by theft, or other clandestine and illicit means; and, upon that conviction, we sentence him to imprisonment with labor and irons for five (5) years."

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

SRI HURI SHAM (No. 5), KHOSAL DOME (No. 8), NOBIN KOTAL (No. 10, APPELLANT), BONOMALI KOTAL (No. 11, APPELLANT), KENARAM PALIT (No. 12, APPELLANT) AND CHURN DOME (No. 14, APPELLANT).

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Case of NOBIN KOTAL and others.

Sentences passed in the sessions court, on conviction of dacoity, affirmed in appeal.

CRIME CHARGED.—1st count, dacoity attended with wounding; and 2nd count, Nos. 10 to 14, knowingly having in their possession plundered property acquired by the above dacoity attended with wounding, the prisoners being police chowkeedars at the time of the occurrence.

CRIME ESTABLISHED.—Nos. 5, 8 and 10, dacoity attended with wounding and Nos. 11, 12 and 14, receiving and knowingly having in their possession plundered property acquired by dacoity attended with wounding.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J. H. Patton, sessions judge of East Burdwan, on the 19th April 1852.

Remarks by the sessions judge.—"This dacoity was perpetrated in the house of one of the witnesses for the prosecution

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Ramjadhub Mookerjea, and attended with severe wounding, the witness Gurudass Hari, a chowkeedar, having lost the use of his left hand from a sword-cut. The dacoits were not disturbed until they had accomplished the work of plunder, when leaving the premises, they retreated before the village party, who had assembled to confront and pursue them. After going a short distance they halted and gave the villagers battle, when blows and sword-cuts were exchanged. The prisoner No. 5, and others (released as per Statement No. 8 for the present month) were identified during the conflict by the light of a torch, which Ramjadhub had brought away from the premises and was carrying, but effected their escape. In a tank adjoining the house of the prisoner No. 8, were found certain articles of the plundered property, and on the person of the prisoner No. 12, a bag containing silver ornaments, some complete, some broken. The bag was concealed in a secret part of the prisoner's person and fell to the ground on his suddenly getting up. A gold *mudli*, or neckbeads, was pointed out by the prisoner No. 14 to a police burkundauz concealed under some brushwood. The act was voluntary and was preceded by an admission of crime. The evidence against the prisoners is clear and conclusive. The prisoner No. 5 was recognized during the encounter, confessed in the Mofussil, and when apprehended exhibited a fresh wound on the wrist, for which he was unable satisfactorily to account, but which, according to that person's deposition, was dealt him by the witness Gudai Hari chowkeedar in the fight. The prisoners Nos. 8, 10 and 11, confessed the crime both before the police and the deputy magistrate, and the prisoners Nos. 12 and 14 in the Mofussil. The prisoners all plead 'not guilty' before this court. Their general defence is an *alibi*, with exception to the prisoner No. 12, who called witnesses to prove that the articles found on his person were conveyed thither by the police and deposited in his clothes, that those found in his house were his own property, and that the scratch apparent on his back, was caused by his coming in contact with a pointed bamboo protruding from the thatch of his house. The other prisoners also claim such articles as were discovered in their houses, and the prisoner No. 14 charges the police with producing the *mudli* alleged to have been indicated by him. Seventeen witnesses were examined for the defence; but their testimony was in no way calculated to invalidate the strong evidence found and recorded against the prisoners,—the *alibis* and other details of plea attempted to be established being vague and indefinite. I convict the prisoners of the charges set forth in column 10, and sentence them according to the extent of their respective criminality. The prisoner No. 5 having been convicted in the foregoing trial also, I pass on him the consoli-

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dated sentence sanctioned under the provisions of Regulation XV. of 1814, which I think in his case a sufficiently heavy punishment, as he is quite a youth, and has been probably led away by bad example rather than evil propensity. The prisoners Nos. 10 and 11 are village chowkeedars, and have consequently incurred an enhanced penalty."

Sentence passed by the lower court.—No. 5, fourteen (14) years' imprisonment, and in lieu of stripes a further period of two (2) years, total sixteen (16) years' imprisonment with hard labor and irons, in banishment, being a consolidated sentence for two offences; No. 10, fourteen (14) years' imprisonment, and in lieu of stripes to a further period of two (2) years, total sixteen (16) years' imprisonment, with hard labor in irons, in banishment; No. 8, fourteen (14) years' imprisonment with hard labor in irons, in banishment; No. 11, seven (7) years' imprisonment, and in lieu of stripes a further period of two (2) years, total nine (9) years' imprisonment with hard labor in irons, in the district jail, and Nos. 12 and 14, each, seven (7) years' imprisonment with hard labor in irons, in the district jail.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton).—"This case has been twice before the court on the separate appeals of Sri Huri Sham and Khosal Dome.

"The other prisoners now appeal, urging that they were not identified by witnesses at the time of the occurrence, and pointing to some supposed inconsistencies in the column showing the date of apprehension as compared with their Mofussil confessions. I find no reason to interfere with the sentences which have been passed on sufficient and credible proof. The appeal is, therefore, rejected.

"In the remarks on the abstract, it is stated that Churn, prisoner No. 14, confessed in the Mofussil, from which, in the absence of anything to the contrary, it is inferrible that his confession was proved and entered on the record of the case. It is not so, however, and the reason has been omitted to be stated. The proof against this prisoner consists in the evidence to his possession of plundered property."

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

R. H. MYTTON, ESQ., *Officiating Judge.*

BEHARI TOORHA

versus

GUNGA TOORHA.

1852.

June 30.

Case of GUNGA.

Wilful murder. Sentence, death. A dying declaration should be entered on the record, and proved on the trial.

CRIME CHARGED.—Wilful murder of Jootee and Jeoot Toorha.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 30th May 1852.

Remarks by the sessions judge.—"I should observe, before entering into the following brief statement of the facts of this case, that both Jootee and Jeoot Toorha (deceased) were brothers and uncles of the prosecutor Behari Toorha (who, moreover, is the son-in-law of the former) and that they had for some time been at issue with the prisoner Gunga Toorha, (who is of the same caste,) in consequence of his having taken to himself the wife of a younger brother, owing to which they had given up all intercourse, and even refused to work with him. This had caused great disputes and heart-burnings between them; and it is in evidence that the prisoner had taken their conduct towards him in bad part, and had repeatedly threatened to be revenged upon them for it.

"Upon the evening of the 15th ultimo, both Jootee and Jeoot, with Behari and some other bearers, who had been employed in carrying a *palkee*, returned with it to mouza Nuggra, when, their services being no longer required, they separated, and went off to their houses in different villages near at hand; Jeoot, Sreekishen and some others, it appears, went on a-head, but both Jootee and Behari (prosecutor) remained behind for a short time, and got some food, and then followed them; and as they came up to the prisoner's house (which they had to pass) they found him sitting there armed with a *kuttar* (or dagger) and *lohbunda*. As soon as the prisoner saw them he began to abuse Jootee, who in like manner replied, when he (prisoner) rushed at him and gave him two mortal wounds in the throat with the dagger, upon which he fell down, and almost immediately expired.

"Upon this Behari cried out, and gave the alarm, when Jeoot (who it appears was only a little way a-head) at once ran back and struck the prisoner two blows with a *lattee*, when he (prisoner) turned round and hit at him with the *lohbunda*, but the blow falling upon Jeoot's *lattee*, the *lohbunda* broke in half, and

then the prisoner, closing with him, stabbed Jeoot in the side and shoulder with the dagger, and when it was taken from him by one of the by-standers, made off and escaped, and Jeoot, after lingering eight days in hospital, there died of the wounds inflicted on him.

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"Information was at once sent off to the thanna, and the mohurir starting the next morning for the scene of the murder, on the way fell in with and captured the prisoner, and sent him in to the magistrate, when he stated that the zemindar Baboo Nirbhan Singh had beaten him, and looted his house, in consequence of his having refused to let him use his *palkee;* and had then (to save himself and to conceal what he had done) desired some of his own people to wound both the men.

"There is, however, ample evidence to show that the prosecutor's story of what took place is, on the whole, correct; as some of the neighbours came up (on hearing his cries) in time to see what happened; and Jeoot before he died, spoke clearly to the fact of the prisoner's having stabbed both his brother and himself. The witness Ablack (who lives next door to the prisoner) states, that having come home from work just before the thing occurred, he saw the prisoner sitting at his own door, having both the dagger and the *lohbunda* by him, and that whilst he was, inside his house drinking some water, he heard Behari's cries, and rushed out, and saw Jootee lying on the ground, and the prisoner stabbing him in the neck; and that when Jeoot had come up, and hit him with his *lattee,* he also saw him (prisoner) stab him in the side, &c., after which he (witness) managed to take the dagger from him, though he (prisoner) himself escaped.

"Three other persons (Lootf Alee, Rostum Alee and Askurree,) also depose to their having seen what took place, and, though they differ in some minor points, on the whole they all speak most clearly to the facts of the prisoner's having stabbed both the men, and also to that of his having before threatened to be revenged on them for having discontinued to associate with him; and as they are all perfectly unconnected with the parties, there is no reason to discredit their statements of what they saw, &c.

"In his defence the prisoner denies having wounded either of the men, and says, that Baboo Nirbhan Singh, the zemindar, wanted his *palkee,* and upon his refusing to give it (as it was engaged), ordered the other bearers, and most of the persons who have given evidence in this case, to set upon and beat him, and *loot* his house, &c., which they accordingly did; that becoming senseless from the blows he received, he does not know what may have been done, or how the two men were wounded, and he adds that having passed the night in the bazar at Muhsaree, he was going the next day to the thanna to complain,

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when he was arrested by the mohurir on the road. He calls no witnesses whatever.

"The moulvee convicts the prisoner of the wilful murder of both Jootee and Jeoot; and I regret to say that I cannot but concur in this finding. It is clear beyond all doubt, that the prisoner attacked and murdered Jootee (an unarmed man), against whom he had long entertained revengeful feelings, and there is very strong reason to believe that he was lying in wait in order to do this when he should come up. The case is somewhat different as regards Jeoot, as he clearly attacked the prisoner before he was himself injured by him; but under all the facts of the case I cannot but hold him responsible for his death also, as the latter was only doing what was natural and proper in seeking to aid and rescue his brother from the murderous attack made upon him by the prisoner; and under these circumstances, I cannot but hold him guilty of the death of both the parties. The story told in his defence, I consider altogether incredible, and as, under all the facts of the case, I know of nothing which can be urged in extenuation of these most cruel murders, I deem it my duty, in referring the case, to recommend that the prisoner Gunga Toorha be sentenced to death."

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and R. H. Mytton.)—"The homicide of Jootee and Jeoot by the prisoner is fully proved: that of the former is unquestionably wilful murder. Regarding that of the latter some question might arise, as it appears that Jeoot did not interfere in a quarrel between his brother, the deceased Jootee, and the prisoner to prevent mischief, nor did he attempt to arrest the prisoner; but coming up after Jootee had been mortally stabbed, and when the prisoner was going away, struck him from behind with a *lattee* more than one blow. The prisoner turned round, and then stabbed Jeoot. The *futwa* of both courts, without adverting to these circumstances, which distinguished the killing of Jeoot from that of Jootee, finds the prisoner guilty of the wilful murder of both, and pronounces him liable to *kissas*.

"It is unnecessary to decide whether this *futwa* as regards the homicide of Jeoot is repugnant to justice, and such therefore as should be set aside under Section IV. Regulation IV. of 1797, as the prisoner has justly incurred the utmost penalty of the law for the premeditated murder of Jootee.

"The prisoner is convicted of the wilful murder of Jootee Toorha, and sentenced to suffer death.

"The court observe that it would have rendered the record more complete if the dying declaration of Jeoot had been entered on it and proved, but the proof, independent thereof, is ample for conviction."

MISCELLANEOUS CASE.

PRESENT:

W. B. JACKSON, Esq., *Judge*.

PUNCHUM SINGH

versus

MOTEE LOLL DHOOBA.

1852.
June 29.
Case of MOTEE LOLL DHOOBA.
Sessions judge recommended that a commitment be cancelled, on account of insufficiency of evidence to convict; ordered to complete and try the case.

CRIME CHARGED.—1st count, wilful murder of the prosecutor's son-in-law, Sibux Singh and his son Rajaram Singh, at three o'clock on the morning of the 17th February 1852, corresponding with about three *puhurs* of the night of the 5th Phagoon 1258; 2nd count, dacoity in the house of the above-mentioned Sibux Singh, attended with the murder of the said Sibux Singh and his son Rajaram Singh, and plundering therefrom property of the value of rupees 2,085; 3rd count, knowingly receiving and keeping in possession property acquired by the above-mentioned dacoity; and 4th count, an accessary before and after the fact to all the above-mentioned offences.

Committing Officer, Baboo Jogesh Chunder Ghose, deputy magistrate, exercising magisterial powers, Gurbettah, West Burdwan.

Tried before Mr. P. G. E. Taylor, sessions judge of West Burdwan.

Remarks by the sessions judge.—"I am forced to adopt this extreme measure, by the strange incompleteness of the investigation made by the deputy magistrate, Baboo Jogesh Chunder Ghose, in the Mofussil, and the *obvious probability* disclosed by the thanna and foujdaree proceedings, *of not only more evidence, for or against the prisoner Motee Dhooba, being obtained*, but also of the discovery and apprehension of the persons who actually committed the murder, and their instigators to the deed.

"The circumstances of the case are briefly as follows:—

"The deceased appears to have been a sort of village attorney, accustomed to engage in numerous quarrels and disputes of other persons, for excitement or profit, besides having a good many of his own. He also had lands of different descriptions in his tenancy, and considerable miscellaneous business that brought him good returns. This mode of life was, of course, productive of many enemies, both small and great. Among the former was the prisoner, whom he had often seized and beaten for rent, and among the latter, Baboo Khettro Mohun Singh, a great grand-uncle of the present Bishenpore Raja, Gopal Singh, against whom he obtained a decree for rupees 1,800 many years ago.

"Reference to the record of the trial of Goora Manjhee and others, for burglariously entering the dwelling of the deceased,

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and severely wounding him in 1836, which is among the papers sent, will pretty clearly show, that Khettro Mohun Singh must have endeavoured to destroy the deceased vicariously on that occasion, when he came into Bancoorah, for the purpose of taking measures for the realization of the moneys due.*

"The record of the second trial of the above-named Goora Manjhee, for dacoity, in the year 1845, (see Reports of Mr. E. Deedes, No. 2, of the 8th April 1845,) and particularly the answer given therein by the prisoner, will remove any doubt as to his connexion with Baboo Khettro Mohun Singh, which may have remained after consideration of the previous trial. It is worthy of remark, that Goora Manjhee and his accomplices failed to slay the deceased Sibux Singh in 1836, because they attacked him *in the dark*. Khettro Mohun is dead, but his son Suttroghun, and grandson Brijo Kishore, Baboos, are still answerable for the debt of rupees 1,800, and the evidence of the widow of deceased shows that he had demanded payment and brought stamped paper to sue out execution against them again, about three months before the murder took place. The same deponent stated that other causes of hatred had existed, such as quarrels about villages which deceased would not give up to the baboos, a false Regulation VII. case, in which Hurgobind Baboo (a cousin of Brijo Kishore) was defeated, &c.

"Examination of the record of inquiry, made by the deputy magistrate, in regard to a *benamee* petition, found in the Bishenpore thanna, on or about the 16th October 1851, or 31st Assin 1258 B. S., or about four months before the murder, and which was most probably placed there by the deceased, will show that there was strong reason to suspect the existence of a plot for his destruction at that time, and that it was intended to mislead the police, and gratify the persons employed by robbing his house also.

"I beg to solicit the attention of the court to this case, and particularly to the nature of the investigation made by the darogah of Bishenpore, and the deputy magistrate's interlocutory and final orders.

"The deceased was actually murdered on the night of the 4th Phagoon, or three o'clock on the morning of the 17th February 1852, in the most cruel and deliberate manner, in his own house, and in the presence of his wife, by persons at once perceived by her to be *nugdees*, or paid servants of some rich man. She could not recognize the murderers; but the person who held

* The prisoners in that case were released by the sessions judge, because he was not satisfied with the nature of the evidence; but security for two years was demanded, and not being obtained, they were again imprisoned for that period.

the torch (without which they might have been as unsuccessful as Goora Manjhee) was the prisoner Motee. 1852.

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"The brave and faithful wife endeavoured to rise to assist her husband, but one of the villains kept her down with ease, as she was pregnant, until their victim was dead, and then asked for treasure. Twice had she the courage, horribly situated as she was, to misdirect them, though threatened with death for her first subterfuge; and it was when they let her go, in their eagerness for the money, the second time, that she snatched up her two little daughters and succeeded in dashing through a side door and alarming the neighbours.

"Rajaram, the innocent son of the deceased, a boy of twelve years old, was also slain, either by the same villain who killed his father or by others waiting outside, most probably the latter, as some of his wounds had been inflicted with a spear.

"Two thousand rupees and four gold mohurs were taken out of a chest, which was broken by the murderers; but other valuables were not touched.

"The court will hardly believe, that although the whole of the above circumstances were detailed in the evidence given in the Mofussil and at the foujdaree by Musst. Hureepriah and others, the deputy magistrate not only took the investigation out of the hands of the darogah of Bishenpore, when that officer's repeated applications for orders, in regard to the apprehension of Brijo Kishore Baboo and his *nugdees*, and search of their houses, had become troublesome, but actually committed the prisoner Motee to the sessions, without making the *least* inquiry in the direction so obviously indicated by concurrent circumstances.

"Of these the thanna and foujdaree proceedings contain many, as follows :—

"The wife of deceased deposed that Gopal Sircar, an old servant of theirs, but latterly in the employ of Hurgobind Baboo, had come to the deceased, just before he retired to rest on the fatal night, and asked him, how it was that he saw none of his people with him; upon which deceased replied that (his guards) Kartick Authpohuree, No. 8, and Choonee Laul, No. 7 and his gomashta Seeboo, No. 12, would sleep in the *baree*, as usual.

"The foujdaree depositions of the two first of these persons, who were not examined at the thanna, because they did not make their appearence until three days after the murder, declare that they came afterwards, and slept on one side of the *baree;* that they were awakened at three in the morning by Musst. Hureepriah's exclamations that Motee and others had murdered her husband; that they fled to a short distance and hid themselves; that they saw a number of persons come out of the *baree*,

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who were making a great noise; that they heard the voice of Motee among them, speaking with revengeful delight of his enemy's death; and that they immediately thereafter went to their own homes. One of these two persons, *viz.*, Choonee Laul, No. 7, stated that a certain *gowalla*, named Madho, or Madhub, had taken him in Assin last to his house where Brijo Kishore Baboo had said to him, don't keep watch over Sibux's *baree*, I intend to kill him; and that Kartick Authpohuree, No. 8 and Gunnesh Rae, No. 13, were present, and heard this speech.

" Kartick denied the truth of this statement, but Gunnesh Rae, No. 13, who left the service of the deceased in Aghun last, distinctly supported it, and said that he had been twice sent for by Brijo Kishore Baboo, but would not go the second time.

" The information given by him to the deceased, which was that he had been asked to say where he slept, and where he kept his money, was evidently the origin of the *benamee* petition above alluded to.

" The witness Audoree Lohareenee, No. 9, corroborated the statement of Hureepriah, as regarded Gopal Sircar's visit on the fatal night, and Seeboo Gomashta deposed to his knowledge of the proposals made by Brijo Kishore to Kartick Authpohuree, and others, and that he had heard of them from the said Kartick himself.

I need hardly indicate to the court the extremely strong suspicion that these statements induce of collusion between the guards of the deceased, Gopal Sircar, and the actual murderers, and how directly and deeply they implicate Brijo Kishore Baboo, when the hereditary and personal hatred borne by him to the deceased is considered.

" Moreover, when the house of Gopal Sircar was searched, a spear, *tanghee*, and sword, were found, and a relation or servant of his attempted in vain to secrete the latter weapon.

" Certain witnesses deposed before the darogah that Brijo Kishore Baboo, who, with Hurgobind and Suttroghun Baboos, usually live in the *killa*, or raja's palace, or close to it, and within a stone's throw of the house of deceased, was absent at a place called Bhugwanbatee on the night of the murder, and returned thence on the 7th Phagoon, or three days after it.

" When he went to the above village on the 29th Magh, he was accompanied by Anoo Gope, Madho or Madhub Gope, Fuqeer Gope and others, of whom the second named appears to have been the person who took Choonee Laul to Brijo Kishore Baboo in Assin last, for the purpose of persuading him to betray his master.

" The baboos, though called upon, would not furnish the darogah with a list of their *nugdees*, nor would the raja, who said he knew nothing about any but his own.

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"The raja gave no notice of the occurrence of the crime to the deputy magistrate for a long period of time.

"Gopaul Maul, one of the baboos' *nugdees*, said to have gone to the village of Patur Sair, has not yet turned up.

"All the above circumstances tell against Brijo Kishore, and add heavily to the suspicion that involves his conduct. The widow Hureepriah has always said that the murderers she did not recognize were *nugdees*.

"The only tangible evidence against the prisoner Motee Dhooba is that of the said widow, who though a *purdah nusheen*, had evidently had frequent opportunities of seeing him, when he came to pay rent to her husband, or to bring cloth for sale. She said that he was present at the murder, when she first rushed out of the scene of it, and has said so repeatedly since.

"The evidence of Kartick, No. 8, and Choonee Laul, No. 7, who pretend that they heard his voice, when the murderers were leaving the house of the deceased, is not worthy of credit. That of Hureepriah, Seeboo and others, is, however, conclusive as to his ancient enmity to the deceased; and there are certain circumstances which occurred at his capture, which, taken with Hureepriah's confident and consistent statements, make the suspicion against him strong.

"I did not myself examine any of the witnesses after No. 3 and the native doctor; but have carefully translated and noted all the thanna and foujdaree papers, and old records, to which the deputy magistrate ought to have referred.

"With reference to the evident incompleteness of the thanna and foujdaree investigations, I did not consider it expedient or proper to examine any more of the witnesses, or put the prisoner upon his defence at present.

"The prisoner being in *hajut*, it is my object to obtain the orders of the court for the cancellation of the commitment, and full re-investigation immediately, and I trust they will, therefore, excuse my not having given them translations of the principal depositions in this report. They are so voluminous that such a course would only have taken up my time unnecessarily; and I am so hard pressed at present that every minute I can save is valuable to the public.

"I think that the pregnant abstract I have above given, will convince the court of the necessity of re-investigation by the officiating joint magistrate in person. This district, and particularly Bishenpore, is infamous for assassinations of this kind, and if such cases are not most strictly inquired into, we shall have sworded bravoes attacking people they or their masters hate, in every direction.

"The conduct of the deputy magistrate, Baboo Jogesh Chunder Ghose, in this affair has been such, that I consider him no longer

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fit for employment at Gurbettah. He has evidently been most timid and subservient, to say the least of it; and I am therefore constrained to recommend his removal from his appointment.

"The Gurbettah division is one, which, in consequence of the near presence of the Bishenpore family, and the unruly character of its inhabitants, should at all times be held by a competent covenanted, or uncovenanted *European* officer; and I strongly recommend that such a functionary be sent there as soon as possible.

"Copy of this report has been sent to Baboo Jogesh Chunder Ghose, and his reply* shall be forwarded, with such remarks as I consider necessary, as soon as received."

Resolution of the Nizamut Adawlut, No. 875, dated 29th June 1852.—(Present: Mr. W. B. Jackson.)—"The court, having perused the papers above recorded, observe, that the prelimi-

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* Explanation of Baboo Jogesh Chunder Ghose, deputy magistrate of Gurbettah.

"I have the honor to acknowledge the receipt of your letter, No. 118, dated the 14th instant, with its enclosure (copy of a report, No. 4, upon the murder case of Sibux Singh, submitted by you to the Nizamut Adawlut,) and in reply beg to offer the following explanation of my conduct in the investigation of that case, which I hope will be considered satisfactory.

"I beg to bring to your notice, that no requisition was made to me by any party upon oath for the apprehension or searching the house of Brijo Kishore Singh, suspected by Hureepriah (the widow of the deceased Sibux) to have been one of the instigators of this murder. There has been no evidence(*a*) against him in this case. The property plundered from the house of the deceased consisted of gold and silver coins, which are not susceptible of recognition; and it would not have looked strange or suspicious if a certain sum of money had been found in the house of the Baboo,(*b*) who is respectably connected. Under such circumstances, and keeping in view the Clause 4, Section II. Regulation I. of 1811, I did not consider myself warranted to place the Baboo under arrest,(*c*) or to have his house searched. When the first report of the police reached me, I ordered the darogah that, on an application being made to him on oath for searching the house of any party, he was to do so. I believe the houses of some of the *nugdees* (*d*) were searched by the darogah, some weapons were found, but not the plundered property.

(*a*) *Note by Sessions Judge.*—No direct evidence as yet; but so many concurrent circumstances tell against him that his answer and clear proof of non-complicity appear demandable.

(*b*) *Note by Sessions Judge.*—The darogah, when recommending search, seems to have aimed at finding the sword only. The discovery of money would not, of course, have told against the Baboo, unless, indeed, the bags or *beejuk*, which might have been recognized by Hureepriah, had turned up.

(*c*) *Note by Sessions Judge.*—If the deputy magistrate had made full inquiry regarding the enmity, long subsistent between the Baboo and Sibux Singh, and referred to the old cases having connexion therewith, he would have seen ample reason for placing the Baboo in arrest, or under surveillance, and taking a full explanation of the movements of himself and *nugdees*, at the time of the murder from him.

(*d*) *Note by Sessions Judge.*—Gopal Mal Nugdee has not yet been found.

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nary investigation is a matter under the superintendent of police, with which the Nizamut Adawlut have no right to interfere; nor is the apparent defect in that investigation a sufficient reason for cancelling the commitment. If the evidence against the prisoner Motee is insufficient for conviction, and the sessions judge finds reason to believe that further evidence may be had against him, he can direct such further evidence to be sought for and sent in, the prisoner remaining in the meantime under commitment. The conduct of the preliminary investigation is exclusively

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"As this is a very serious case, I thought it proper to make a local inquiry personally. I took the depositions of a good number of the neighbouring people beside those of the widow and the servants of the deceased (Sibux), and verbally asked several others(*e*). I likewise examined some police *ghatwals*, who keep a watch in the *gurh*, where the Baboo and his relatives Hurrogobindo and Suttroghun Singh reside, and particularly questioned them what parties came out of the fort or went in it on the night of the murder,(*f*) and at the time of returning to Gurbettah, I ordered the darogah to make further inquiries. Subsequently, under instruction from the superintendent of police, I issued an order offering rupees 300(*g*) as a reward to any person who would give such information as would lead to the conviction of other parties (than Motee Dhooba) concerned in this murder. While I lament that no evidence has been produced against the principal murderers and their instigators, I do not know what other means I could have taken to make an inquiry in the direction alluded to in the concluding part of the 13th paragraph of your report. The positive evidence of Hureepriah,(*h*) which is fully credible, backed by the depositions of her servants and some of her neighbours to whom she mentioned Motee Dhooba's name immediately after the murder of her husband, and the circumstances of the case has brought home the guilt against the prisoner; and I have committed him to the sessions. Under the Circular Order of the Nizamut Adawlut, No. 48, volume II. and Construction No. 634, the testimony of one credible witness is sufficient for commitment. Should any evidence be obtained hereafter against other parties in this case, (which I still hope, as a reward has been offered for that purpose,) the commitment of Motee Dhooba would not vitiate their trial, and so I did not think it proper to keep his case pending.

(*e*) *Note by Sessions Judge.*—It appeared to me, on perusing the depositions taken by the deputy magistrate, that he avoided, as much as possible, asking any questions likely to elicit answers unfavorable to the Baboos.

(*f*) *Note by Sessions Judge.*—This was quite useless as the murderers most probably came from the Baboo at Bhugwanbatee, to which place he had gone as a blind

The deputy magistrate made no effective inquiry regarding the movements of the Baboo and his *nugdees*.

(*g*) *Note by Sessions Judge.*—A ridiculously small amount under the circumstances, and the deputy magistrate must have been aware that such was the case when he recommended it. A thousand rupees would be too little to engage any cognizant person to denounce a connexion of the raja's family, unless the protection of Government were further promised in the shape of an appointment.

(*h*) *Note by Sessions Judge.*—This is the only credible evidence against Motee Dhooba, and though strong when coupled with his notorious enmity to the deceased, is evidently insufficient for his conviction.

If a larger reward is offered, and re-investigation on the spot ordered, more conclusive evidence is likely to turn up, particularly if the lost *nugdee* is got hold of.

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in the hands of the police officers, who are responsible for it only to the magistrate and superintendent of police, and not the judicial authorities. Any irregularity or want of efficiency on their part in the exercise of police functions, which may come to the notice of the sessions judge during a criminal trial, he should bring to the notice of the superintendent of police.

"The sessions judge has not assigned sufficient reason for cancelling the commitment, but he may communicate at once with the superintendent of police, with a view to further investigation, and, in the meantime, may keep the prisoner under trial.

"As regards the power of a sessions judge to cancel a commitment, the court refer Mr. Taylor to paragraph 6, of Circular Order No. 70, dated 14th November 1851."

"The *benamee* petition case originated in the time of my predecessor, Mr. Joint Magistrate Dodgson. It was struck off the file by me, as the deceased objected to swear to the truth of the charge. I would have referred to that case had any evidence been obtained against Brijo Kishore Singh in the present one. I did not know any thing about the other two old cases.(i)

"Under the above circumstances, I trust you will be pleased to alter your opinion of my conduct in the investigation of this case and remove from your mind the impression that 'it has been most timid and subservient';(j) and I deeply regret that you made use of such expressions without taking previously an explanation from me.

"I admit that the people of Bishenpore are unruly in their character, and the failure of the crops this year has made them very needy; but I beg to bring to your notice that I have caused the police chowkeedars to arm themselves with bows and arrows, and have suggested a revision of the distribution of the police force; so I earnestly hope that you will kindly withdraw the recommendations contained in the 33rd and 34th paragraphs of your letter.

"In conclusion I beg to observe that, as the records of the case are not in my court, the explanation has not been sufficiently detailed, and there has been a slight delay in forwarding it."

(i) *Note by Sessions Judge.*—One of them was referred to in the evidence of Hureepriah and others, and its consideration would have elicited the subsequent one.

(j) *Note by Sessions Judge.*—This impression was made by the entire tenor of the deputy magistrate's proceedings, both in the *benamee* case, and that under more particular remark, and still subsists in my mind.

I would be glad to have it erased; for it gives me no pleasure to be obliged to mistrust my subordinates.

If the deputy magistrate's proceedings had been quick, close, fearless, and inquisitive, the true murderers of Sibux would have been brought to justice ere this.

SUMMARY CASE.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

RAJA LUCHMUNPERSAD GURG, PETITIONER.

1852.

June 17.

Case of LUCHMUNPERSAD GURG.

A magistrate should distinctly set forth in his order what precise act coming within the scope of the prohibition of the law, he considers to have been committed by a party against whom forfeiture of a *mochulka* taken under Act V. of 1848, is adjudged by him.

The *mochulka* should be strictly according to the form prescribed by that Act, and the forfeiture engaged for, to Government and not to the magistrate.

THIS was an appeal from an order of the sessions judge of 24-Pergunnahs, dated the 25th May 1852, confirming that of the magistrate of Howrah, of the 11th May 1852.

The petitioner was directed to pay the sum of rupees 10,000, under the terms of a *mochulka** given by him to the magistrate on the 30th December 1851, in an affray case, in which the Government was prosecutor, and the petitioner and others were defendants.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—"The *mochulka* is not in the form of the Act, but for what is beyond the Act, *viz.*, for whatever affray *the petitioner's people* may commit. Indeed, the form prescribed by the Act has been entirely set aside. The forfeiture is engaged for, not to the Government, but to the magistrate of Howrah. Such mere irregularity the Court would not hold to vitiate the *mochulka*, if an act had been proved which would fairly bring the petitioner within the predicament contemplated by the legal form of *mochulka*. But the magistrate does not distinctly set forth what precise act he considers it shown that the petitioner personally committed. There must be a clear finding as to such personal act before a forfeiture under the law (Act V. of 1848), can be adjudged.

"Order reversed."

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* *To the Magistrate of Howrah.*

I, Raja Luchmunpersad Gurg, zemindar of pergunnah Mundulghat, &c., execute this *mochulka* to this effect, *viz.*, that in consequence of its being communicated to you by the report of the darogahs of thannas Kotra and Bagnan, that an affray is likely to take place between me and my dismissed dewan Ramnarain Geree, owing to divers disputes connected with the zemindaree of pergunnah Mundulghat, you have directed that both parties be called upon to enter into a *mochulka* to keep the peace in the penal sum of rupees 10,000 each. Accordingly, with reference to the copy of a *perwannah*, No. 280, dated the 26th December 1851, issued by you to the darogah of thanna Bagnan, I do hereby execute this *mochulka* to the following effect:—That if I or any one on my part, in connexion with the dispute in question, commit any affray with the said Geree during this year, then, on proof being adduced, I, according to your order, shall without objection pay the sum of rupees 10,000, under the condition of this *mochulka*, on default of payment you will realize the same in the usual manner. I accordingly execute this *mochulka*, dated 30th December 1851, corresponding with the 17th Poos 1259 B. S.